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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 216

SHOSHONE TRIBE OF INDIANS OF THE WIND RIVER RESERVATION IN WYOMING, PETITIONER,

vs.

THE UNITED STATES

No. 328

THE UNITED STATES, PETITIONER,

vs.

SHOSHONE TRIBE OF INDIANS OF THE WIND RIVER RESERVATION IN WYOMING

ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS

PETITIONS FOR CERTIORARI FILED JULY 22, 1936.
SEPTEMBER 1, 1936.

CERTIORARI GRANTED OCTOBER 19, 1936.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

COURT OF CLAIMS OF THE UNITED STATES

No. H-219

SHOSHONE TRIBE OF INDIANS OF THE WIND RIVER RESERVATION IN WYOMING

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On May 27, 1927, the plaintiff filed its original petition.

On July 6, 1927, the defendant filed a general traverse to said petition.

On September 12, 1931, the plaintiff filed a motion for leave to file an amended petition.

On September 30, 1931, the court allowed said motion and the amended petition was filed, which is as follows:

II. AMENDED PETITION—Filed September 30, 1931

To the Honorable, the Chief Justice and Associate Justices of the Court of Claims:

Your Petitioner, the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming, respectfully represents to the Court:

[fol. 2]

I

It is a tribe of Indians formerly and now in treaty relations with the United States, under the control and guardianship of the United States, and is a resident of the State of Wyoming. Its members now occupy lands in common and in severalty in said State. It brings this suit by virtue of an Act of Congress approved March 3, 1927 (44 Stat. 1349—4 Kappler 937), entitled "An Act Authorizing the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming to submit claims to the Court of Claims," which act is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress as-

sembled, That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party, notwithstanding the lapse of time or statutes of limitation, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims which the Shoshone Tribe of Indians of the Wind River Reservation in the State of Wyoming may have against the United States arising under or growing out of the treaty of July 3, 1868, (Fifteenth Statutes, page 673), or arising under or growing out of any subsequent treaty or agreement between said Shoshone Tribe of Indians and the United States or any subsequent Act of Congress affecting said tribe, which claims have not heretofore been determined and adjudicated upon their merits by the Court of Claims or the Supreme Court of the United States.

[fol. 3] "Sec. 2. The claims of said tribe shall be presented by petition, subject, however, to amendment at any time. The suit under this Act shall be instituted or petition filed in the Court of Claims within three years from the date of approval of this Act. Such suit shall make the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming party plaintiff and the United States party defendant. The petition shall be verified upon information and belief by the attorney or attorneys employed by said tribe to prosecute said claims under contract approved by the Commissioner of Indian Affairs and the Secretary of the Interior. Letters, papers, documents, and public records, or certified copies thereof, bearing upon the claims presented, may be used in evidence; and the departments of Government shall give the attorney of said tribe access to any such letters, papers, documents, or public records and shall furnish certified copies of such thereof as may be deemed material.

"Sec. 3. In said suit the court shall also hear, examine, and adjudicate any claims which the United States may have against said tribe, but any payment, including gratuities which the United States may have made to said tribe, shall not operate as an estoppel, but may be pleaded as an offset in such suit: *Provided, however,* that the United States may interpose to such suit or action any and all pleas of defense, affirmative and negative, legal and equit-

able, which it may have thereto not herein specifically barred by the provisions of this Act. In reference to all [fol. 4] claims which may be the subject-matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Shoshone Indians in and to such money, lands, or other property.

"Sec. 4. Upon final determination of such suit or suits the Court of Claims shall have jurisdiction to fix and determine a reasonable fee, not to exceed 10 per centum of the recovery, together with all necessary and proper expenses incurred in preparation and prosecution of the suit, to be paid to the Attorneys employed by said Shoshone Tribe of Indians, and the same shall be included in the decree and shall be paid out of any sum or sums found to be due said tribe.

"Sec. 5. The Court of Claims shall have full authority by proper orders and process to bring in and make parties to said suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy.

"Sec. 6. A copy of the petition in such suit shall be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States.

[fol. 5] "Sec. 7. All amounts which may be found due and recovered for said tribe under the provisions of this Act, less attorney's fees and expenses, shall be deposited in the Treasury of the United States to the credit of said tribe and shall draw interest at the rate of 4 per centum per annum from the date of the judgment or decree."

II

The Shoshone Tribe of Indians entered into a contract of employment with George M. Tunison, Attorney at Law of Omaha, Nebraska, dated December 14, 1926, under which said Tunison is authorized to represent the Shoshone Tribe of Indians and to file this suit in its behalf. Said contract was duly approved by the Commissioner of Indian

Affairs and the Secretary of the Interior under date of February 17, 1927. Subsequently, with the approval of the Commissioner of Indian Affairs and the Secretary of the Interior, under date of March 19, 1927, said Tunison assigned an interest in said contract to Albert W. Jefferis, Attorney at Law, Omaha, Nebraska, and an interest therein to Charles J. Kappler, Attorney at Law, Washington, D. C.

III

Prior to July 3, 1868, petitioner possessed and occupied a large tract of land consisting of approximately 44,000,000 [fol. 6] acres, situate in Wyoming, Utah, Idaho and Colorado under treaty with the United States dated July 2, 1863 (18 Stat. 685—2 Kappler 848), and was continuously in possession and occupation thereof from 1863 to July 3, 1868.

IV

On July 3, 1868, petitioner and the United States entered into a treaty which was ratified on February 16, 1869 and proclaimed February 24, 1869 (15 Stat. 673—2 Kappler 1020). Articles 1 and 2 in part and Article 11 of said treaty of 1868 are as follows:

"Article 1. From this day forward peace between the parties to this treaty shall forever continue. The government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they hereby pledge their honor to maintain it."

"If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs, at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also re-imburse the injured person for the loss sustained."

[fol. 7] "Article 2. The United States further agrees that the following district of country, to-wit: Commencing at the mouth of Owl Creek and running due south to the crest of the divide between the Sweetwater and Popo-Agie

Rivers; thence along the crest of said divide and the summit of Wind River mountains to the longitude of North Fork of Wind River; thence due north to mouth of said North Fork and up its channel to a point twenty miles above its mouth, thence in a straight line to head-waters of Owl Creek, and along middle of Channel of Owl Creek to place of beginning, shall be and the same is set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated, and authorized so to do, and except such officers, agents, and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will and do hereby relinquish all title, claims, or rights in and to any portion of the territory of the United States, except such as is embraced within the limits aforesaid."

"Article 11. No treaty for the cession of any portion of the reservations herein described which may be held in [fol. 8] common shall be of any force or validity as against the said Indians, unless executed and signed by at least a majority of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive without his consent, any individual member of the tribe of his right to any tract of land selected by him, as provided in Article 6 of this treaty."

In consideration of the execution of said treaty of July 3, 1868, petitioner relinquished all of its rights, title and interest in and to the lands confirmed to it by the treaty of July 2, 1863, and purchased and accepted in lieu thereof the lands described in Article 2 of said 1868 treaty. By the express terms of said treaty of 1868, petitioner was granted, and there was set apart for its absolute and undisturbed use and occupation, a defined tract of country in the present State of Wyoming, containing 3,054,182 acres, more or less, which it has, since the year 1868 up

to the present time, held, possessed, occupied and claimed continuously and uninterruptedly, with the exceptions hereinafter referred to when it ceded certain portions to the United States, and with the exception of properties for which petitioner is claiming damages which shall hereinafter be more fully stated, said exception applying to the jurisdictional act of March 3, 1927.

[fol. 9] Your petitioner has at all times duly and in good faith kept each, all and every of the covenants in said treaty of 1868 agreed by it to be observed and performed.

V

Prior to July 3, 1868, that being the date of the treaty between the United States and petitioner and on May 10, 1868, a treaty was entered into (15 Stat. 655—2 Kappler 1012) between the Northern Cheyenne and Northern Arapahoe Indians, and the United States, by the terms of which (Article 2), among other things, said Northern Arapahoes would, within one year from May 10, 1868, attach themselves permanently, either to a portion of the country set apart as a home for the Southern Arapahoe and Cheyenne by treaty of October 28, 1867 (15 Stat. 593—2 Kappler 984), or to a portion of the country set apart as a home for the Brule and other bands of Sioux Indians, with whom said Arapahoes were affiliated, by treaty of April 29, 1868 (15 Stat. 635—2 Kappler 998), all of which was well-known to the United States at the time it entered into said treaty of July 3, 1868 with petitioners,—in fact, all three of said treaties were executed on behalf of the United States by the following named persons, (omitting titles) viz: W. S. Harney, C. C. Augur, Alfred H. Terry, John P. Sanborn and Samuel F. Tappan, and two of said treaties were signed by W. T. Sherman.

[fol. 10] After July 3, 1868 and until and including a portion of the year 1877, the Northern Arapahoe Indians were at war with the United States and petitioner, having refused to attach themselves to any of the country referred to in said treaties of October 28, 1867 and April 29, 1868, but on the contrary, continued all that while to roam at will in Nebraska and Dakota territory, to the great annoyance and danger of the inhabitants thereof and at great expense and trouble to the United States. The Secretary of the Interior, the Secretary of War and the Commis-

sioner of Indian Affairs, being unable to induce said Arapahoes to go, or attach themselves, to a home provided for them by the treaties last aforesaid and having no place provided for them to spend the winter of 1877-1878, said Arapahoes being at that time in a weakened and starved condition with no means of sustenance, by and through acts and orders of executive officers, claiming to act for the United States, arbitrarily and contrary to the recommendations and protests of Generals W. T. Sherman and P. H. Sheridan and other officers and agents of the United States, did in the autumn of 1877, direct and require that said Arapahoe Indians, under escort of United States Army officers and soldiers, be removed and located near, at and upon the Shoshone Reservation aforesaid without first [fol. 11] having obtained the consent of said Shoshone Indians thereto given by tribal council or otherwise. The Arapahoe Indians to the number of about 938 were on or about the month of December, 1877, so as aforesaid, conducted, removed to and placed upon said reservation contrary to petitioner's treaty rights, and they have been ever since, and from year to year, kept, protected and permitted to reside and be upon the reservation lands of petitioner. In this connection, petitioner shows to the Court that when said Arapahoe Indians arrived at or near the lands of said reservation, some of the head men and chiefs of said Arapahoe Tribe came to the reservation headquarters of petitioner, there meeting Chief Washakie, the headman and chief of said Shoshone Tribe, and asked to be permitted to stop and rest on said reservation for a short time, giving as a reason therefor the impoverished, weakened and starved condition of said Arapahoes and their horses. Pursuant to said request Chief Washakie stated to the representatives of said Arapahoe Tribe that they could stay on the reservation and visit for a short time on condition that they leave at the earliest possible moment. By reason of the premises aforesaid, the Shoshones, actuated solely by humane considerations, gave consent that said [fol. 12] Arapahoes could visit and rest on said reservation for a short time, all of which the United States and its officers and agents well knew. After said Arapahoes entered upon said reservation of petitioner, in manner and upon the conditions aforesaid, and after they had been there to visit for a short time, petitioner requested their

removal from said reservation by the United States, and objected to and protested against their further presence there frequently and continuously until March 3, 1927. About February 21, 1878, petitioner specifically objected to the occupation of said reservation, or any part thereof, by said Arapahoes and said protests and objections were communicated by James J. Patten, Indian Agent of the Shoshone Reservation, to the Commissioner of Indian Affairs at Washington, D. C., as follows:

"I have the honor to request instructions relative to the removal of the Northern Arapahoes, under Black Coal, to this reservation, and to say, that a good many of the Shoshones would give a welcome to them. But, there is a large majority of the tribe, including Washakie the chief, and nearly all the leading men, who strongly object to their coming, and of dividing their reservation with any other tribe. The Shoshones did agree, and are still willing to make peace with the Arapahoes, they have nothing to say [fol. 13] against their agent having the charge over the former tribe also, but want them placed on a reservation apart from the Shoshones, and, they give as a reason, that the reservation as it is at present, is none too large for the use of the Shoshones, and furthermore, the Shoshones are afraid that the two tribes will not agree well together, that the Arapahoes would probably ill behave themselves and bring trouble upon the Shoshones.

"Agent Irwin, in his council, held with the Shoshones last fall, told them distinctly that the President had not the remotest thought of placing the Arapahoes on the reservation of the Shoshones—that that was not the design of the Government at all. That all that was desired, was for the Shoshones to make peace with said tribe, and that the department would have a piece of land near the mouth of the Sweetwater set apart for the Arapahoes, and although the agent of the Shoshones should be agent of the Arapahoes also, yet the President did not by any means intend to place the Arapahoes directly upon this reservation. Agent Irwin made the above plain statement to the Shoshones in council last fall, and the Shoshones now understand and believe that the Arapahoes are to be removed hither at once.

"I have been lead to make the foregoing statement from the perusal of the Honorable Commissioner's remarks on

[fol. 14] the 'Removal of the Northern Cheyennes and Arapahoes' (Annual Report of Commissioner of Indian Affairs, 1877, page 19) as follows: 'In a formal council held last month by Agent Irwin with the Shoshones, their consent to the arrangement desired by the Arapahoes was obtained and the removal of the latter is now in progress.'

"Now, certainly there has been a mistake made somewhere as Dr. Irwin wrote to me personally under date of December 6th, 1877, as follows:

(Extract from Agent Irwin's Letter)

"* * * I see that Wm. Welch, and others in Philadelphia, are getting up a scheme to put the Arapahoes on the Shoshone agency. Now, this must not be without the Shoshones are agreed, and even then it is not fair. The Shoshones reservation belongs to them, as much as any man's farm belongs to him, and it is just as fair to say to a white man who has a title to his farm that he shall give another man half of it. Wm. Welch is a good man, but he is always getting his foot in it. But I want you to protect the Shoshones from all incroachments in every direction. The Arapahoes should have a reservation but the Government has no right to filch it off the Shoshones, and I would like you to tell the Shoshones to spurn any such proposition as an outrage upon them and their rights. The President promised the Arapahoes a reservation at [fol. 15] the Red Buttes including the mouth of the Sweetwater, and that is what the Arapahoes wanted, and that the agent of the Shoshones should be their agent, and that is all right, and all the President will ask to have done. I take it for granted that you know of Wm. Welch's meeting in Philadelphia proposing to put the Arapahoes on the Shoshone Reservation and open a mission school."

"Solicitude for the welfare of the Shoshones, as well as for the Arapahoes, has also prompted me to write this letter. The department will readily, I think, observe the necessity for a more perfect understanding of the case of my Indians, than they have yet had, before the Arapahoes are ordered in, thus saving further complication and misunderstanding.

"There was present at the council held by Agent Irwin with the Shoshones, alluded to above—the persons named below:

"Captain E. M. Hayes, U. S. A., commandant Camp Brown; Captain Woodson, U. S. A. Lieuts. S. A. Cherry and H. S. Bishop, U. S. A.; James K. Moore, post trader, Camp Brown; R. B. Grimes, post surgeon, Camp Brown and agency physician, and others—citizens and employees.

"Before closing, I would respectfully state that I heartily indorse the policy of the department to collect several small [fol. 16] tribes together upon one reservation and under one agent and it is with the desire to be able to use my influence for the furtherance of this object, that I now write for instructions.

"I have the honor to be,

Very respectfully, your obt. serv't, James J. Patten,
U. S. Ind. Agt."

In 1877 Lieut. General P. H. Sheridan advised the Secretary of War as follows:

"Headquarters, Mil. Div. Mo.,
Chicago, Mch. 27 1877.

"To the Secretary of War:

"Respectfully forwarded. The Northern Arapahoes, like the Northern Cheyennes, are by association and marriage so closely allied to the Sioux Indians that they can appropriately be considered with them as a part of the same people. I am out-and-out opposed to a union of these Indians with the Shoshones. They are a distinct Indian Nationality, and have always been at war with each other until last fall, when they came together as scouts, with Gen. Crook's command, and patched up some kind of a peace.

"If any change is ever made with this small remnant of Arapahoes, it is my opinion they should go to their friends, [fol. 17] the Southern Arapahoes, to whom they originally belonged, now on the North Canadian in the Indian Territory, at Fort Reno. They have, I think, been heretofore regarded in the appropriations made by Congress as an integral part of the Southern Arapahoes, and have been provided for in appropriations for these people. There are but few objections to their being sent to Fort Reno, and last summer they were anxious to go. They number about 1,500, and are so weak and broken-down as to be easily controlled and well fitted to accept the conditions of civilization and religious influences. If the Indian Department

wish, I will agree to move them south with but little expense and in a satisfactory manner. Otherwise, they should live with the Sioux, their companions for many years, and the provisions made by Congress should be included in the Sioux appropriations.

P. H. Sheridan, Lieut. Gen. Comgd."

The Northern Arapahoes were fully aware of their lack of title, and invalid tenure to the lands they occupied on petitioner's said reservation, and said Northern Arapahoes had full knowledge that petitioner had never consented to admit said Northern Arapahoes amongst them or to share its reservation with them, as is shown by the communication from United States Indian Agent Thomas M. Jones, dated March 20, 1886, reading as follows:

[fol. 18] "Shoshone Agency, Wyo.,
March 30, 1886.

"Hon. Commissioner of Indian Affairs.

SIR:

"I am requested by the leading men of the Arapahoe Indians to state that they feel extremely uneasy in regard to their future prospects in view of a proposed bill before Congress respecting Indian lands.

"They fear that as Washakie, the chief of the Shoshones (so far as they can learn), has never surrendered on behalf of his tribe any of the land rights to them, but has simply given his consent to the Arapahoes living here—and in case of passage of such an act—the law will fix it that this land belongs solely to the Shoshones and hence that they will be left out on this reservation and also the one they came from.

"They beg you to see to it that their tribe, already poorer than either of these two, be not left out in the cold.

"There is no record of the facts of the removal of these Indians in this office and it appears to me to have been done through a Dr. Irwin on the request of the Arapahoes by consent of Washakie, and this I have from the Indians themselves. I beg that you will assure them that they will [fol. 19] get their rights either in this, or the other reservation.

I am sir,

Respectfully, yr, obt. sv't., Thos. M. Jones, U. S. Indian Agt."

Notwithstanding the above protests, and other repeated protests to the same effect, executive officers of the United States, claiming to act for the United States, but without any authority of law forced said Northern Arapahoes upon said reservation and claimed for them equal rights upon and equal use of said reservation with petitioner, including equal use of Shoshone treaty money supplies and other treaty rights, and equal use of all employees provided by said treaty.

Petitioner did not give, and has not given, at the times aforesaid, or at any other time, in council assembled, or otherwise, by vote or signature of a majority of the adult males of petitioner's tribe, or in any other manner, consent to the Northern Arapahoes being permanently located upon said reservation or any part thereof, nor consent that said Arapahoes should come and be upon said reservation for any purpose whatsoever other than to allow them to rest [fol. 20] for a short time, as aforesaid. Petitioner has never admitted said Arapahoes amongst them nor ceded to them any portion of its reservation, or in any manner agreed to share any of its benefits arising from its treaty rights.

At the time said Arapahoes were conducted to and upon petitioner's reservation, as hereinbefore stated, said Arapahoes and the petitioner were, and for generations had been, traditional enemies frequently engaged in war with each other, all of which was known to and fully understood by the United States. Had it not been for the presence of officers and soldiers of the Army of the United States at and on said reservation, petitioner would have expelled said Arapahoe Indians therefrom after they had remained thereon for a short time after the winter of 1877-1878, and after the expiration of one year from the time said Arapahoes came on said reservation. At no time have the Shoshones ever consented to admit said Arapahoes into any joint council, nor have the Shoshones participated in any manner, of their own volition, with said Arapahoes, or consented to their presence at any council attended by the petitioner. There has been no amalgamation of the two tribes, no marriages or adoptions of Arapahoes as blood brothers, or otherwise, by petitioner; said tribes do not [fol. 21] speak the same language, and differ widely in habits and attributes, seldom associating with each other. Not only did petitioner protest at the time said Arapahoes were placed upon said reservation, but they specifically

protested in 1891 and again in 1894, when the United States attempted to obtain from it a cession of land; again when the agreement of 1896 was entered into; again when the agreement of 1904 was entered into, and has frequently and continuously, up to the date of the jurisdictional act, to-wit: March 3, 1927, demanded of the United States that said Arapahoes be removed from said reservation and that all lands belonging to petitioner be restored to petitioner. Petitioner protested against the appropriation of its funds and property, as aforesaid, for the use and benefit of the United States or for the use and benefit of said Arapahoes, and against sharing any of the rights and benefits of said reservation and treaty stipulations and agreements with said Arapahoes or anyone else. The United States has refused, and continues to refuse, to remove said Arapahoes from petitioner's reservation; has refused, and continues to refuse, to restore the lands and treaty rights withheld by the United States from petitioner; has refused, and continues to refuse, to pay to petitioner all moneys arising [fol. 22] from the sale and lease of its treaty lands; but on the other hand, the United States has elected, by and through the terms of said jurisdictional act, that as to all claims which are the subject-matter of this suit, the decree of the Court shall be in full settlement of all damages committed by the Government of the United States, and that such decree shall annul and cancel all claims, rights and title of the said Shoshone Indians in and to moneys, lands and other property rights of the Shoshones in said reservation, being the subject-matter of this suit, and to appropriate said moneys, lands and other properties of its use and benefit as in eminent domain.

VI

Petitioner avers that it and the United States entered into the several agreements referred to in this paragraph at the times, under the conditions and for the considerations in this paragraph stated, to-wit:

(a) An agreement dated September 26, 1872, ratified and confirmed by Act of Congress approved December 15, 1874, (18 Stat. 291—1 Kappler 153), under which the defined reservation granted petitioner under the 1868 treaty was confirmed, and by reason of the fact, as set forth in [fol. 23] said agreement, that "mines had been discovered

and citizens of the United States had made improvements within the limits of said reservation," the United States obtained from petitioner a cession of a portion of the reservation embracing such mining districts by changing the southern line of said original reservation.

(b) An agreement dated April 21, 1896, ratified and confirmed by Act of Congress approved June 7, 1897 (30 Stat. 62—1 Kappler 624), whereby petitioner ceded a certain described tract of land ten miles square at the northeast corner of said reservation embracing the Big Horn Hot Springs. Said agreement was negotiated by Inspector James McLaughlin, United States Indian Inspector, on the part of the United States and the Shoshone and Arapahoe Tribes at a council held at the Shoshone Agency Council Room on said reservation on April 20 and 21, 1896. During the holding of said council, a controversy arose between the two tribes. Said Inspector stated that the great Father (United States) wished the Arapahoes to take part in the agreement, whereupon the petitioner acquiesced therein under protest, upon the condition that a provision would be inserted in the agreement reserving to it its treaty rights, but for which agreement to so insert said reservation, peti- [fol. 24] tioner would not have signed the same. Pursuant thereto, and for the purpose of reserving to the petitioner all of its rights under the 1868 treaty a clause was inserted in said agreement, as follows:

"Art. 4. Nothing in this agreement shall be construed to deprive the Indians of any annuities or benefits to which they are entitled under existing agreements or treaty stipulations."

(c) An agreement dated April 21, 1904 ratified and confirmed by Act of Congress approved March 3, 1905 (33 Stat. 1016—3 Kappler 117). Articles 1, 2 and 9 read in part as follows:

"Article 1. The said Indians belonging on the Shoshone or Wind River reservation, Wyoming, for the consideration hereinafter named, do hereby cede, grant and relinquish to the United States, all right, title and interest which they may have to all the lands embraced within the said reservation, except the lands within and bounded by the following described lines: Beginning in the mid-channel of the Big

Wind River at a point where said stream crosses the western boundary of the said reservation; thence in a southeasterly direction following the mid-channel of the Big Wind River to its conjunction with the Little Wind or Big Popo-Agie River, near the northeast corner of township one south, range four east; thence up the mid-channel of [fol. 25] the said Big Popo-Agie River in a southwesterly direction to the mouth of the North Fork of the said Popo-Agie River; thence up the mid-channel of said North Fork of the Big Popo-Agie River to its intersection with the southern boundary of the said reservation, near the southwest corner of section twenty-one, township two south, range one west; thence due west along the southern boundary of the said reservation to the southwest corner of the same; thence north along the western boundary of said reservation to the place of beginning; Provided, That any individual Indian, a member of the Shoshone or Arapahoe tribes, who has, under existing laws or treaty stipulations, selected a tract of land within the portion of said reservation hereby ceded, shall be entitled to have the same allotted and confirmed to him or her, and any Indian who has made or received an allotment of land within the ceded territory shall have the right to surrender such allotment and select other lands within the diminished reserve in lieu thereof at any time before the lands hereby ceded shall be opened to entry.

"Article 2. In consideration of the lands ceded, granted, relinquished and conveyed by Article 1 of this agreement, the United States stipulates and agrees to dispose of the same as hereinafter provided, under the provisions of the homestead, townsite, coal and mineral land laws, or by sale for cash, as hereinafter provided * * * and the United States agrees to pay the said Indians the proceeds derived from the sales of said lands the amount so realized to be [fol. 26] paid to and expended for said Indians in the manner hereafter provided."

"Article 9. It is understood that nothing in this agreement contained shall in any manner bind the United States to purchase any portion of the lands herein described or to dispose of said lands except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the understanding that the United States shall act as trustee for said Indians to dispose of said lands and

to expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided."

That agreement was the result of a council held at the Shoshone Agency on said reservation on April 19, 20 and 21, 1904, at which said James McLaughlin, Indian Inspector as aforesaid, represented the United States and at which meeting Shoshones and Arapahoes were present.

In the meeting on April 19th, said Inspector made the following statement:

"My desire is that my words shall be conveyed to you people clearly and fully, and that your words shall be conveyed to me in the same manner."

Following the foregoing statement there was a general [fol. 27] discussion among those present, after which said council was adjourned until April 20, 1904. At the meeting on April 20th, pursuant to adjournment, after the question of an agreement had been discussed at considerable length by members of the Arapahoe Tribe, said Inspector said:

"We are now ready to listen to the Shoshones, and would like to hear from all who have anything to suggest."

Whereupon, George Terry, one of the head men and a member of, and spokesman for, the Shoshone Tribe at said council, stated:

"First and foremost, we must protest against having the Arapahoes in council with us."

Thereupon said Inspector and Henry E. Wadsworth, United States Indian Agent for said reservation, who was also present and participated in said council, stated to those present, including the Shoshones, that:

"A formal objection and protest on the part of the Shoshones and a reservation of all their treaty rights inserted in the agreement would protect them in their claim to sole ownership of the reservation."

[fol. 28] Whereupon said Shoshones acquiesced in the presence of said Arapahoes at said council, but only upon the conditions aforesaid, and thereafter, all meetings held and actions taken were with the understanding that the

Shoshones did not in any degree recede from their position of claimants as sole owners of the Shoshone Reservation.

The meeting of April 20th was adjourned to the following day, to-wit: April 21st. The council re-convened on April 21st, whereupon said Inspector made the following statement:

"I have prepared the agreement with great care and your interests are fully protected by it, as I promised you yesterday."

Again:

"The agreement has been clearly read to you and interpreted, and it is strictly in accordance with the conclusions we reached yesterday, and I now ask you: Are you ready to accept it?"

At said meeting of April 21st, said Inspector presented to petitioner a fully prepared written agreement, prepared and dictated by him, stating that said agreement was [fol. 29] strictly in accordance with the agreements and stipulations hereinbefore agreed to be entered therein. Article 10 of said agreement so prepared was, as follows:

"Art. 10. It is further understood that nothing in this agreement shall be construed to deprive the said Indians of the Shoshone or Wind River reservation, Wyoming, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement."

Petitioner did not read nor fully understand the meaning of said Article 10, but believed that said Article 10 did embody the agreements to be put therein, as hereinbefore stated. Said reservation so inserted did not comply with the agreements between petitioner and said Inspector, but on the contrary contained at the foot of said Article 10, the words: "not inconsistent with the provisions of this agreement." Your petitioner understood said reservation, as contained in said written contract, was intended to and did in fact reserve to and fully protect it, in all of its rights of every character and kind under said 1868 treaty, and would not have signed said agreement had it known and understood said reservation in any different sense.

[fol. 30] VII

The agreement of April 21, 1904, ratified and confirmed by Act of Congress approved March 3, 1905, (33 Stat. 1016—3 Kappler 117), was the result of the council meetings of April 19, 20 and 21, 1904 at which Harry E. Wadsworth, United States Indian Agent at the Shoshone Reservation, was present and participated. At the opening of the meeting of the council Agent Wadsworth introduced Inspector McLaughlin, who had negotiated the 1896 agreement with the Indians, using the following language:

"Washington has sent an old friend to talk to you. He is a man who probably knows more about Indians than any other person. He has spent most of his life, and it has been a long one, working with the Indians. He understands them and understands what they need. That is the reason Washington has sent him here, and also because he understands just what you ought to have. He has come here to find out what you Indians want to do about the sale of some of your lands. Whatever he will tell you will be just right. He will do right for you, and everything he says will be best for you. That is all I have to say. A great many of your people know him and know that he understands this business, and now I will let him talk to you. This is [fol. 31] Major McLaughlin, an old friend of the Indians."

During said councils with the Indians, Inspector McLaughlin made the following statements to them:

(1) "The President and the Secretary of the Interior are desirous to have you sell your surplus lands and open them to settlement as much so as Congress, but at the same time, they are desirous to see that the Indians have full compensation for such lands ceded to the Government. For several years past there has been a sentiment in Congress, and one that is growing stronger each succeeding year, opposed to paying the Indians a lump sum consideration for their lands. Instead of stipulating, or providing in the agreement, a lump sum consideration for any tract of land, they have determined upon giving the Indians the full benefit of the land by paying the Indians from the proceeds of the sale of the land as white men settle upon it."

(2) "While we can not say just what the Indians will receive under this new policy, as we could under the old system, they will receive more in the aggregate than under the old lump-sum agreements."

(3) "My friends, that you may understand better and more clearly, the Governement as guardian is trustee for [fol. 32] the Indians, acting for the Indians, selling the lands for them, collecting for the same and paying the proceeds to the Indians at such times, and in the manner as may be stipulated in the agreements, and this, without any cost to the Indians."

(4) "My friends, the timber on your reservation, of course, goes with the land, and your lands up in the mountains are of little value without it. The timber enhances the value of your lands in the mountains. These will probably come under the class of lands that will be disposed of after the homesteads, as people will hardly go up there to file homesteads, although the law permits them to do so. You will therefore get whatever these lands bring. You will receive for your coal and mineral lands the price provided for that class of lands by law. They are worth probably $10.00 per acre now, but will be worth $20.00 per acre when the railroad comes. There is a law governing the price of your mineral lands, and you will get that price for them. Therefore I can make no provision for additional compensation for your timber."

It was at this meeting that George Terry made the protest under the circumstances and conditions set forth in Paragraph VI above. Following the foregoing statements, [fol. 33] Inspector McLaughlin recited what cash was to be paid under said agreement, the money payments aggregating $335,000.00. Said agreement was signed, as hereinbefore stated, on April 21, 1904.

Petitioner avers that it understood from the terms of said agreement and the statements so as aforesaid made by said Inspector McLaughlin, that it was to have the full and complete interest in all lands described therein and it would be paid for the full value thereof, including timber, oil, coal and other minerals, and understood that the United States would act as trustee for it as cestui que trustent, as well as under the terms of said 1868 treaty, and relying

on such statements so made by said Inspector McLaughlin and the terms of said agreement, as interpreted to it by said Inspector, it entered into said agreement and signed the same.

Subsequent thereto, the Congress of the United States ratified said agreement by the Act approved March 3, 1905 without any modification whatsoever concerning the statements and things referred to in this paragraph.

In this connection, petitioner shows to the court that the United States did not comply with the terms of said agree- [fol. 34] ment by it to be performed, but on the contrary withdrew said lands from entry and sale, but has continued to hold the same in trust for this petitioner until the passage of the Act of March 3, 1927, at which time the United States took and appropriated to its use and to public use an undivided one-half of the properties referred to in said agreement, so held in trust, and which constitute a part of the subject-matter of this suit.

VIII

By the Act of Congress approved August 21, 1916, (39 Stat. 519—4 Kappler 93), Congress acknowledged and ratified the claim of the petitioner herein that it had the sole right and title to the whole of the moneys arising from the sale and lease of lands granted to it under the 1868 treaty.

Section 1 of said Act provided:

"That the Secretary of the Interior is hereby authorized and empowered to lease, for the production of oil and gas therefrom, lands within the ceded portion of the Shoshone or Wind River Indian reservation in the State of Wyoming, under such terms and conditions as shall be by him prescribed; and the proceeds or royalties arising from any such leases shall be first applied to the extinguishment of any indebtedness of the Shoshone Indian tribe to the United [fol. 35] States and thereafter shall be applied to the use and benefit of said tribe in the same manner as though secured from the sale of said lands as provided by the act of Congress approved March 3, 1905."

IX

A. Article 2 of the treaty of 1868 provides:

"The United States now solemnly agrees that no persons except those herein designated, and authorized so to do, and except such officers, agents, and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon or reside in the territory described in this article for the use of said Indians, and henceforth they will and do hereby relinquish all title, claim or rights in and to any portion of the territory of the United States, except such as is embraced within the limits aforesaid."

Notwithstanding this solemn treaty stipulation, and with the knowledge on the part of the United States that certain portions of the lands within the limits of petitioner's reservation contained valuable deposits of gold, and other precious metals, the United States permitted and encour- [fol. 36] aged citizens of the United States, against the protest of petitioner, to intrude, settle, reside upon, and mine and take away large amounts of gold belonging to petitioner to the loss and damage of petitioner in the sum of $1,106,750.00.

B. In further violation of said Article 2 of the treaty of 1868 and in violation of the express covenant and agreement of the United States to protect the interests and rights of petitioner in and to said reservation, the United States, with full knowledge of the aforesaid situation and conditions, permitted many thousands of cattle, horses and other livestock not owned by petitioner, nor belonging or having any right to be on said reservation, annually to go upon, graze and range on and over said reservation and consume and destroy the grass and crops and food stuffs thereon belonging to petitioner, from and during the years 1873 to 1894, both inclusive, (after which time the United States recognized its duties and obligations in that regard and put an end to such trespassing) of the value of $40,000 per year and a total value of $840,000. For the years 1873 to 1877, both inclusive, five years, petitioner sustained the entire loss and damage, viz: $40,000 per year, amounting to $200,000, and for the years 1878 to 1894, both inclusive,

[fol. 37] seventeen years, petitioner sustained one-half of said loss and damage, amounting to $20,000 per year, or a total of $340,000. The total loss and damage sustained by petitioner during said periods amounted to $540,000.

C. In addition to the provisions quoted from Article 2 aforesaid, said treaty of 1868 gave to petitioner the exclusive right to hunt on said reservation for their living and sustenance; that said exclusive right to hunt thereon was protected in said treaty, not only by said Article 2 above quoted, but by the further provision therein that said petitioners should make said reservation their permanent home, and make no permanent settlement elsewhere, and by the further provision that said reservation "is set apart for the absolute and undisturbed use and occupation of" the petitioner. In further violation of said treaty, and in violation of the express covenants and agreements of the United States to protect the interest and rights of petitioner in and to said reservation, the United States, with full knowledge of the situation and conditions, after having been expressly requested to prevent such unauthorized and illegal hunting and destruction of game, permitted the members of said Arapahoe Tribe of Indians and other Indians and white persons to encroach [fol. 38] and trespass upon said reservation and to hunt, kill and destroy the wild game which customarily roamed upon and over said reservation and made its home thereon; said reservation had, from the earliest knowledge thereof by both Indians and white men, been a land of plenty with respect to game; by reason of its well-watered and well-grassed condition, said reservation was a favorite grazing and ranging ground for all kinds of wild game animals in great abundance, such as meat and fur-bearing animals,—buffalo, elk, deer, antelope and bear; also fur-bearing animals, such as beaver, martin and mink. For many years such wild game and fur-bearing animals were sufficiently abundant and available to petitioner to supply it and its members with all the animal food and materials for clothing and tent making, sale and profit therefrom to more than support them in comfort and to supply all of their needs for comfortable living. After said Arapahoes were forced upon said reservation, as in this amended petition set forth, they, other Indians and white persons were so

permitted to trespass and go upon said reservation and hunt, kill, destroy and frighten away from said reservation great quantities of game and fur-bearing animals as to greatly destroy the use thereof by petitioner for the [fol. 39] purposes hereinbefore stated, and to such an extent that petitioner was damaged in the capital sum of $2,025,000.00, and in the loss of game in the further sum of $2,430,000.00, a total of $4,455,000.00.

X

In 1869 the United States deemed it necessary and proper to place soldiers upon said reservation, and to that end requisitioned and took over several thousand acres of land thereon and established thereon the military post of Camp Brown, later designated as Fort Washakie, for military uses and purposes. Several companies of cavalry were stationed at said military post, where they remained continuously up until the year 1909, when said military reservation was abandoned. During the time said military post was occupied, as aforesaid, the commanding officers in charge thereof annually requisitioned and commandeered, for public use and for the use of said cavalry, wood at the rate of 1519 cords and hay at the rate of 516 tons; that the reasonable value of the wood so requisitioned and commandeered and delivered to said cavalry and used by it was the sum of $759.50 per year; that the reasonable value of [fol. 40] the hay so requisitioned and commandeered and delivered to said cavalry and used by it was the sum of $316.00 per year; that the total value of the wood so furnished and used for said period of 40 years was the sum of $30,380.00; that the total value of the hay so furnished and used for said period of 40 years was the sum of $12,640.00. The total value of said wood and hay for said period was $43,020.00, and interest as damages on said sum, from the respective dates of taking to the date of the jurisdictional act herein, at seven per cent per annum, amounts to $58,500.00.

By reason of the taking of said wood and hay as aforesaid, plaintiff has been damaged in the sum of $101,520.00, no part of which has ever been paid by the United States, nor has the plaintiff received any compensation therefor.

XI

The executive officers of the United States, in manner hereinbefore stated and described, settled, incorporated, and allotted, for the use and benefit of the United States and for the public use, the Northern Arapahoe Tribe of Indians on said reservation, and likewise appropriated, expended and made use of large sums of money and large [fol. 41] amounts of property including an undivided one-half interest in all tribal lands belonging to petitioner, all without petitioner's consent and without any compensation having been paid therefor, and all in violation of said 1868 treaty; in violation of the General Allotment Act approved February 8, 1887, as amended by Act of Congress approved February 28, 1891 (26 Stat. 794—1 Kappler 56); in violation of the agreement of April 21, 1896 and the Act of Congress confirming same approved June 7, 1897 (30 Stat. 62—1 Kappler 624); in violation of the agreement of April 21, 1904 and the Act of Congress confirming same approved March 3, 1905 (33 Stat. 1016—3 Kappler 117), and in violation of the Fifth Amendment to the Constitution of the United States.

By the Act of Congress approved March 3, 1927, (44 Stat. 1349), the United States, with full knowledge and understanding of the acts of its executive officers and agents, as in this amended petition enumerated and complained of, in the exercise of its sovereign power of eminent domain, ratified, adopted and assumed responsibility for said several acts of its said executive officers and agents, and for the first time made provision for the payment of [fol. 42] the damages suffered therefrom by petitioner, and for the first time authorized said petitioner to bring suit therefor and to recover thereon.

XII

From and after March 3, 1927, the date of the passage and approval of the jurisdictional act under which this suit was begun, the United States, by and through acts of Congress and its executive officers and with the consent and acquiescence of petitioner, have continued to hold, occupy, use and assert proprietorship and ownership for itself and on behalf of said Arapahoe Indians the full title and right to use and occupy all of said Arapahoe allot-

ments, the right of the use and joint occupancy of said Arapahoes with petitioner on the tribal lands on said reservation, and the right to divide and participate with the Shoshones in the rentals, lease moneys and facilities of said reservation, and has wholly excluded said Shoshones from said allot-ed lands and has excluded said Shoshones from an undivided one-half interest, right or claim in and to all of the tribal lands on said reservation.

[fol. 43] XIII

Petitioner, under the Act of March 3, 1927, makes the following legal and equitable claims for damages which it has suffered by acts of the United States, in this amended petition set forth, arising under and growing out of the treaty of July 3, 1868 (15 Stat. 673), and arising under and growing out of subsequent agreements between said plaintiff and the United States, and Acts of Congress affecting said tribe, which claims have not heretofore been determined and adjudicated upon their merits by the Court of Claims or the Supreme Court of the United States, which said petitioner asks this Court to hear, examine, adjudicate and render judgment upon according to said Act of Congress, that is to say:

[fol. 44] (1) Use and Occupation of Tribal Lands

One-half of the value of the use and occupation of reservation tribal lands for the years, number of acres and amounts following:

Years	Acres	Amounts
1877-1896	2,343,540	$3,058,319.50
1896-1907	2,288,500	1,825,078.50
1907-1915	2,063,596	1,271,175.00
1915-1927	2,040,010	1,626,907.50
		$7,781,480.50
Interest on above at 7% per annum as damages to March 3, 1927, as a part of compensation		7,267,860.00
Total		$15,049,340.50

[fol. 45] (2) Use and Occupation of Arapahoe Allotments

Use and occupation of allotments to Arapahoes on said reservation for the years, number of acres and amounts following:

Years	Acres	Amounts
1907-1927	93,787.12	$2,119,586.00
1915-1927	10,579.34	131,496.00
Total	104,366.46	$2,251,082.00
Interest on above at 7% per annum as damages to March 3, 1927, as a part of compensation		1,455,400.00
Total		$3,706,482.00

(3) Moneys

Balance of moneys belonging to Shoshones wrongfully appropriated by the United States to its use, up to June 30, 1927, $968,863.90.

(4) Value Arapahoe Allotments

Value of lands on said reservation acquired as of March 3, 1927, allotted to Arapahoes (104,366.46 acres), $1,690,-619.00.

[fol: 46] With interest thereon at 7% per annum from March 3, 1927, as a part of compensation.

(5) Value Tribal Lands

Value of an undivided one-half of the unallotted lands on said reservation acquired as of March 3, 1927, for agriculture, grazing, timber, gas, oil, coal, minerals, reservoirs and water power (2,040,010 acres), $9,531,704.50.

With interest thereon at 7% per annum from March 3, 1927 as a part of compensation.

(6) Gold

Value of gold removed from petitioner's reservation by citizens of the United States with the permission and encouragement of the United States, as more specifically

stated in Paragraph IX (A) of this amended petition, $1,106,750.00.

(7) Trespass

Damage sustained by petitioner by trespass on said reservation with the knowledge and permission of the United States, as more particularly stated in Paragraph IX (B) of this amended petition, $540,000.00.

[fol. 47] (10) Game

Damage to petitioner for the destruction of game and the loss of game on said reservation, as more particularly described in Paragraph IX (C) of this amended petition, $4,455,000.00.

(11) Wood and Hay

Damage to petitioner for wood and hay requisitioned and used by the United States for military post on said reservation, as more particularly described in Paragraph X of this amended petition $43,020.00
Interest on said sum at 7% per annum as damages to March 3, 1927, as a part of compensation 58,500.00

Total $101,520.00

XIV

No assignment or transfer of any of petitioner's claims made herein, or any part thereof, or interest therein, has been made, except as stated in this petition, and petitioner is justly entitled to the amounts claimed from the United States, after allowing all just credits and offsets. Petitioner has at all times borne true allegiance to the Government of the United States and has not in any way vol-[fol. 48] untarily aided, abetted or given encouragement to rebellion against said Government. Petitioner believes the facts stated in this amended petition to be true.

XV

Petitioner alleges that the jurisdictional act under which this suit is instituted provided the first and only right and

remedy Petitioner has had to demand damages for the wrongful acts committed by the defendant, the United States of America, said act providing:

"In reference to all claims which may be the subject matterof the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Shoshone Indians in and to such money, lands, or other property."

Petitioner further alleges that the direct loss and damages resulting to it arising under and growing out of the acts hereinbefore complained of, and for which the United States has paid to the petitioner no compensation or damage whatsoever, are as follows:

[fol. 49]

1. Use and occupation of tribal lands, including interest (See Par. XIII (1) this Amended Petition)	$15,049,340.50
2. Use and occupation of Arapahoe allotments, including interest (See Par. XIII (2))	3,706,482.00
3. Shoshones' moneys wrongfully diverted, with interest thereon at 7% per annum from March 3, 1927 (See Par. XIII (3))	968,863.90
4. Value of Arapahoe allotments, with interest thereon at 7% per annum from March 3, 1927, (See Par. XIII (4))	1,690,619.00
5. Value of undivided one-half tribal lands, with interest thereon at 7% per annum from March 3, 1927, (See Par. XIII (5))	9,531,704.50
6. Gold (See Par. XIII (6))	1,106,750.00
7. Trespass (See Par. XIII (7))	540,000.00
8. Game (See Par. XIII (8))	4,455,000.00
[fol. 50] 9. Wood and hay for military reservation, including interest (See Par. XIII (9))	101,520.00
Total	$37,150,279.90

Wherefore, and by reason of the premises aforesaid, the Shoshone Tribe of Indians of the Wind River Reservation

in Wyoming sues the United States of America for damages and compensation and final accounting and settlement, as provided in the jurisdictional act of March 3, 1927, and claims of the United States that there is due said tribe the sum of $37,150,279.90, together with interest on portions thereof from March 3, 1927, and such additional amount as the court upon an accounting may find to be legal and equitable claims; and prays this Court to render judgment in favor of petitioner and against the defendant, the United States of America, in the sum of $37,150,279.90, and such additional sums as from a full and final accounting shall be found due, and for such other and further relief as may be proper, both at law and in equity. Petitioner further prays that the court decree the fee or fees to be paid to the attorneys representing petitioners, and all necessary and proper expenses and costs incurred in the preparation and prosecution of this suit, as provided by the jurisdictional act, and the contract [fol. 51] executed in pursuance thereof, and that the same be ordered paid to the persons entitled thereto.

The Shoshone Tribe of Indians of the Wind River Reservation, in Wyoming, By its Attorney of Record, George M. Tunison. Charles J. Kappler, Albert W. Jefferis, Of Counsel.

[fol. 52] *Duly sworn to by George M. Tunison. Jurat omitted in printing.*

[fol. 53] III. General Traverse—Filed November 9, 1931

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the amended petition be dismissed.

Charles B. Rugg, Assistant Attorney General.

IV. Argument and Submission of Case

On December 5, 1933, this case was argued and submitted on merits by Mr. George M. Tunison and Mr. Albert W. Jefferis, for plaintiff, and by Mr. Charles H. Small, for defendant.

[fol. 54]

V. Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.—Filed December 2, 1935

Mr. George M. Tunison and Mr. Albert W. Jefferis for the plaintiff.

Mr. Charles J. Kappler and Mr. Francis S. Howell were on the brief.

Mr. Charles H. Small and Mr. George T. Stormont for the defendant.

Mr. William W. Scott was on the brief.

Plaintiff sues to recover a total of $37,150,279.90, together with interest on certain amounts. The amounts making up the total sued for arise out of the claim that the treaty with plaintiff made July 3, 1868, was violated by officials of the United States by placing the Northern Band of Arapahoe Indians on the Shoshone Reservation in Wyoming when the plaintiff tribe was not willing that such Indians be settled permanently on the reservation and that the consent of the plaintiff tribe and the United States to such an arrangement was not obtained, as required by the treaty. Plaintiff, therefore, contends that the Congress, by the Jurisdictional Act of March 3, 1927, ratified the acts of the officials of the United States and by that act took an undivided one-half interest in the reservation by the permanent settlement thereon of the Northern Arapahoe Indians with equal rights with plaintiff tribe, and that the United States is liable under the treaty of 1868, and various agreements subsequently made, to compensate plaintiff for (1) shortage of treaty disbursements; Shoshone Treaty funds disbursed for benefit of the Arapahoes, and monies derived from the reservation under various agreements and the acts of March 3, 1883, and August 21, 1916, wrongfully diverted to the use of the Arapahoe Indians, $968,863.90; (2) use and occupation by Arapahoes of plaintiff's tribal lands prior to allotments, $15,049,340.50; (3) use and occupation of Arapahoe allotments of lands from 1907 and 1915 to 1927, including interest, $3,706,482; (4) value on March 3, 1927, of 104,366.46 acres of land allotted to the Arapahoe Indians, $1,690,619; (5) value on March 3, 1927, of an undivided one-half of tribal lands, $9,531,704.50; (6) value of gold mined and removed

from the reservation by unauthorized persons, $1,106,750; [fol. 55] (7) trespass—in permitting livestock not owned by plaintiff, nor having any right to be on the reservation, to go upon, graze, and range on or over the reservation, thus destroying the grasses, crops, and foodstuffs belonging to plaintiff between 1873 and 1894, of the value of $540,000; (8) destruction of game, $4,455,000; and (9) value of hay and wood taken and removed from the reservation and used for Government purposes at its military post located upon the Shoshone Reservation, $101,520.

Counsel for the defendant contend that the Northern Arapahoe Indians were rightly placed and settled upon the Shoshone or Wind River Reservation on March 18, 1878, and have ever since been rightly upon the reservation, for the reason that before and at the time the Arapahoes were brought to and placed upon the reservation Chief Washakie and the Shoshone Indians expressed their willingness to admit the Arapahoes amongst them, and that the Shoshones and the United States consented to this arrangement in sufficient compliance with art. 2 of the Shoshone Treaty of 1868. It is insisted, therefore, that plaintiff has no claim for compensation from the United States. Counsel for defendant further contend that even if the Shoshone Indians were not willing to admit the Arapahoes amongst them and did not consent thereto when the Arapahoes were brought upon the reservation or at any time thereafter, and if the United States did not consent thereto in the required manner, the plaintiff is not entitled to recover any amount for the reason that the date of the taking of a one-half interest in the Shoshone Reservation for the benefit of the Arapahoe Indians occurred March 18, 1878, and not on March 3, 1927, as contended by plaintiff, and that the fair and reasonable value of 1,171,770 acres, being one-half of the lands embraced in the reservation on March 18, 1878, was $46,000 and the offsets which the Government is entitled to charge against the plaintiff under the Jurisdictional Act amount to $2,947,747.05.

Special Findings of Fact

1. On July 2, 1863, plaintiff tribe of Indians and the United States entered into a treaty, 18 Stat. 685, which set apart for plaintiff a reservation of 44,672,000 acres located in Colorado, Utah, Idaho, and Wyoming in consid-

eration of certain matters mentioned in the treaty. The United States agreed to pay to the tribe annually for twenty years the sum of $10,000 in such amounts as the President might deem suitable for their wants or conditions, either as hunters or herdsmen.

2. By treaty of July 3, 1868, 15 Stat. 673, plaintiff gave up and relinquished this reservation to the United States and accepted in lieu thereof the present reservation, consisting originally of 3,054,182 acres in the State of Wyoming, together with the agreement of the United States to deliver at the agency house on the reservation annually for thirty years, in lieu of all sums of money or other annuities provided to be paid under any and all treaties theretofore made, certain articles of clothing and other supplies, and to construct certain buildings upon the reservation and furnish certain employees and instructors for the Indians, together with a school and a teacher. The important provisions of this treaty were as follows:

[fol. 56] Article 1. From this day forward, peace between the parties to this treaty shall forever continue. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they hereby pledge their honor to maintain it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

"If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States, and at peace therewith, the Indians herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they willfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall

prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss while violating or because of his violating the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

"Article 2. * * * The United States further agrees that the following district of country, to-wit: Commencing at the mouth of Owl Creek and running due south to the crest of the divide between the Sweetwater and Papo Agie Rivers; thence along the crest of said divide and the summit of Wind River Mountains to the longitude of North Fork of Wind River; thence due north to mouth of said North Fork and up its channel to a point twenty miles above its mouth; thence in a straight line to head-waters of Owl Creek and along middle of channel of Owl Creek to place of beginning, shall be and the same is set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will and do hereby relinquish all title, claims, or rights in and to any portion of the territory of the United States except such as is embraced within the limits aforesaid.

* * * * * * *

[fol. 57] "Article 4. The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have their right to hunt on the unoccupied lands of the United States

so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts.

"Article 5. The United States agrees that the agent for said Indians shall in the future make his home at the agency building on the Shoshone Reservation, but shall direct and supervise affairs on the Bannack Reservation, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decisions shall be binding on the parties to this treaty.

* * * * * * *

"Article 7. In order to insure the civilization of the tribes entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages, who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for twenty years.

"Article 8. * * * And it is further stipulated that such persons as commence farming shall receive instructions from the farmers herein provided for, and whenever more than one hundred persons on either reservation shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be required.

"Article 9. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under

any and all treaties heretofore made with them, the United States agrees to deliver at the agency house on the reservation herein provided for, on the first day of September of each year, for thirty years, the following articles, to wit:

"For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, hat, pantaloons, flannel shirt, and a pair of woolen socks; for each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.

[fol. 58] "For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each.

"And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based; and in addition to the clothing herein named, the sum of ten dollars shall be annually appropriated for each Indian roaming and twenty dollars for each Indian engaged in agriculture, for a period of ten years, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper. And if at any time within the ten years it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the tribes herein named, Congress may by law change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an office of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

"Article 10. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmith, as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

"Article 11. No treaty for the cession of any portion of the reservations herein described which may be held in common shall be of any force or validity as against the said Indians, unless executed and signed by at least a majority of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive without his consent, any individual member of the tribe of his right to any tract of land selected by him as provided in Article 6 of this treaty."

The plaintiff tribe immediately went upon this reservation and has ever since remained thereon. Certain portions of the original reservation defined by the 1868 Treaty were ceded to the United States by agreements in 1872, 1896, and 1904, which agreements will hereinafter be referred to more particularly.

3. At the time of the making of the Treaty of 1868 the plaintiff tribe of Indians were full-blood blanket Indians, unable to read, write, speak, or understand English, with little previous contact with whites; but in all their contacts with the white people they had always been friendly. They lived mostly by hunting wild game and fishing. The affairs of the tribe were handled almost entirely by and under the advice of Chief Washakie until his death in 1900, and thereafter by the chief men and members of the tribal council.

The same condition existed in 1872 and in 1896 when agreements were made under which the tribe ceded portions of the reservation to the United States. Practically the same condition as to their education existed at the time the [fol. 59] agreement of 1904, hereinafter mentioned, was made, except, at that time, the Shoshones had considerable contact with white settlers and the Indian agents of the reservation, and a few of them could speak and understand English fairly well.

4. By reason of the loyalty of the Shoshones to the United States and Chief Washakie's outstanding friendship and respect for the military representatives and the civil officers and employees of the United States and his desire to be forever on friendly terms with the Government and its representatives, and by reason of his great influence over the members of his tribe, Washakie and the Shoshones were very tractable. Their attitude toward the Government and

its officers was always one of the fullest cooperation and they always faithfully fulfilled their agreements and promises, once they had made them. Chief Washakie, as the representative of the members of the tribe, was well informed, particularly with regard to the disposition and habits of certain other Indian tribes and with reference to the rights and privileges of the Shoshones under the Treaty of 1868; he was cautious in his dealings with other Indian tribes and with officers and representatives of the Government in matters affecting himself and members of his tribe. He always endeavored to be fair and reasonable, but at the same time he was positive in any promises or demands which he made. When he understood a matter concerning his tribe and the Government he always went as far as he felt he could in agreeing to any request made by the Government officials, but his position and statements in such matters were never indefinite, and he and the members of his tribe implicitly trusted the Government not to overreach them in any such matters. He accepted no more from others than they had promised and he trusted the Government to demand from him no more than he had promised it or its representatives. He had great faith in the representations of the officials of the Government and his attitude was that such representations were not to be disregarded, much less disobeyed or defied. By reason of the great desire of Washakie and his tribe to please the Government of the United States and do whatever they could always to remain on the best of terms with its representatives, and with the Treaty Commissions sent to negotiate with him and his tribe in matters pertaining to the reservation, he and his tribe were induced, but not without assertion of their rights, to permit the Northern Arapahoe Indians, which had been brought upon the reservation in 1878, as will hereinafter be more fully mentioned, to assemble in council with the Shoshones when called at the instance of the Government, but only upon the condition that such permission should not in any way affect the rights of the Shoshones under the treaty and agreements theretofore entered into by the Shoshone Tribe with the United States.

The plaintiff tribe has at all times borne true allegiance to the United States and in war was an ally of the Government. The Shoshone Tribe and its head, Chief Washakie in particular, have been at peace with the whites since they

first encountered Lewis and Clarke in 1805; General Ashley, Major Bridger, Sublette, Campbell, and other pioneers and traders often lived in the villages of the Shoshones in full harmony with them. Washakie took a large war party [fol. 60] of the Shoshones across Big Horn Mountain as an ally of the United States to assist General Crook in his campaign against the Sioux on the Rosebud in 1876, and at other times furnished soldiers and troops to aid the United States Army in its wars with Indians, such as the Sioux, the Arapahoes, and the Cheyennes. At no time did the Shoshone Tribe ever engage in battle, or aid or abet in battle, or war against the United States, its Army, or its white citizens. In many instances the Shoshone Indians furnished aid and comfort to the white emigrants passing through their country on the Oregon Trail and assisted in protecting the whites from hostile Indians.

5. The plaintiff's reservation, set apart by the treaty of July 3, 1868, is located in the central-western part of Wyoming. The Owl Creek range of mountains, constituting the northern boundary of the reservation, rises to an approximate elevation of 12,000 feet. The Wind River range of mountains, constituting the west and southwest boundaries, rises to a maximum elevation of approximately 14,000 feet. The reservation is protected from the elements by these two ranges of mountains; also by the Beaver Divide to the south. The ancient Indian name for the reservation is Warm Valley.

The reservation comprises the fairest and best-watered portion of the State of Wyoming. The character of the land ranges from precipitous mountains at the extreme north and west, down through heavily timbered upland, lower down through well-grassed bench land, to a series of river valleys with level, deep soil toward the eastern portion of the reservation. In the lower altitudes between these river valleys are wide areas of rolling upland covered with salt sage, black sage, and grasses. The reservation is made up in part of unsurpassed mountain scenery. These mountains are the source of some of the largest rivers on the North American continent, and contain within their recesses numerous fresh-water lakes well stocked with trout and waterfowl, and on whose banks live beaver, otter, and other fur-bearing animals. The mountains contain more than 400,000 acres of spruce, pinon, hemlock, balsam, and yellow and

white pine timber. The river valleys are level, easily irrigated, several miles in width, and contain a warm, rich, and productive soil. Stock lives the year around without other feed than being herded on the grasses growing from the mountain tops to the lowest valleys in greatest abundance, affording ample feed and range for livestock in the mountains in the summer season, and in the lower reaches of the reservation in the fall and winter seasons. The water is pure and the climate is mild and regular. The soil is rich and compares favorably in fertility to that of Illinois and Iowa. The climatic conditions are such that the grasses grown on the lower portions of the reservation cure on the ground without cutting or harvesting, and are available in that condition as feed for the livestock in the fall and winter. The average wind velocity is 4.1 miles per hour. This low-wind velocity makes for a low rate of evaporation of moisture from the soil and plants, thus facilitating the growth and preservation of plant life.

The soil and climatic conditions on the reservation are well suited for the production of alfalfa, sweet clover, hard and soft wheat, oats, barley, corn, beans, peas, tomatoes, sugar beets, garden vegetables, small fruits, and melons. The land has a high average yield of crops.

[fol. 61] The reservation contained substantial deposits of coal, oil, gas, gypsum, and minerals. On the northern and western boundaries of the reservation are numerous streams, which, generally, converge toward the east and south boundary of the reservation where they unite to form the Big Horn River. These streams traverse level valleys in the lower portions of the reservation, ranging from a half mile to five miles in width and from a few miles to 30 or 40 miles in length.

The land on the reservation best suited for agricultural purposes lies toward the eastern portion thereof where the river valleys are wider, the soil deeper and free from boulders, easy to irrigate, and nearer a railroad, and, due to elevation, the growing season is from three to four weeks longer in the eastern portion of the reservation than in the western portion. The Arapahoes were placed on the eastern portion of the reservation. The average annual precipitation on the reservation is from about ten to twenty inches in the lower portions thereof, and from twenty to twenty-five inches in the mountainous portions. Ample

water is available to irrigate all agricultural land on the reservation. The reservation is supplied with sufficient water power for the production of water, electric light and power.

At the time of the execution of the treaty of July 3, 1868, buffalo, elk, bear, antelope, deer, and other wild animals suitable for food, were in great abundance on the reservation. Such game was native and indigenous to the mountains and valleys of the reservation and was found sufficiently adequate for subsistence of the Indians for many years. The plaintiff tribe of Indians went on annual hunts into the mountains for food, and the skins of certain wild animals were used for robes and other necessary uses for members of the tribe. Prior to and after execution of the treaty of July 3, 1868, defining the original reservation for the Shoshone Indians, hunters and trappers killed many of the wild animals native to the territory covered by the treaty and many of them were frightened away—all with the result that in the years following the date of the treaty the number of buffalo and other wild animals roaming the reservation and within the mountainous regions thereof was greatly reduced.

6. Promptly following the execution of the treaty of 1868, the United States constructed on the reservation the agency house and other buildings mentioned therein and furnished an agent, together with other employees provided for in the treaty. Thereupon the Shoshone Tribe occupied the reservation and ever since that date it has made the same its permanent home, making no settlement elsewhere, and that tribe has claimed the reservation as its own exclusive property continually and uninterruptedly since that date and during such period it has held possession of and occupied the same. Ever since entering into the treaty the Shoshones have fulfilled all the obligations, terms, and conditions therein required of them.

7. May 10, 1868, a treaty was entered into between the Northern Arapahoe Indians and the United States (15 Stat. 655), by the terms of which, among other things, said Northern Arapahoes agreed to accept "for their permanent home some portion of the tract of country set apart and designated as a permanent reservation for the Southern [fol. 62] Cheyenne and Arapahoe Indians by a treaty entered into * * * at Medicine Lodge Creek [seventy

miles south of Larned, Kansas, October 28, 1867, ratified July 25, 1868], or some portion of the country and reservation set apart and designated as a permanent home for the Brule and other bands of Sioux Indians, by a treaty * * * of April 29, 1868" (15 Stat. 635).

By this treaty of May 10, 1868, the Northern Arapahoe Indians relinquished, released, and surrendered to the United States all right, claim, and interest in and to all territory outside the two reservations mentioned; and in this treaty the United States agreed to assist the Arapahoes in farming on said reservations, to provide for the selection of certain tracts of land in severalty thereon for the Arapahoes, to provide schools thereon for the education of Arapahoe children, and to provide clothing and rations, also a physician, teachers, carpenters, and other employees, all for their sole benefit.

8. A tract of country was assigned under the Ft. Laramie Treaty of 1851 to the Arapahoe and Cheyenne Indians on the south and north of So. Platte River. The Arapahoes occupying that portion of the country north of the South Platte River were known and called the "Northern Arapahoes and Cheyennes", and those occupying that portion south of the river as the "Southern Arapahoes and Cheyennes." The division in the Arapahoé Tribe became permanent because of the feud arising between them in 1854, one part thereafter, the Southern Arapahoes, living on the Arkansas River, and the other, the Northern Arapahoes, living on the North Platte River. By the treaty of May 10, 1868, the Northern Arapahoes agreed to attach themselves permanently either to the agency provided near the mouth of Medicine Lodge Creek or to the agency to be established on the Missouri River near Ft. Randall, or to the Crow Agency near Otter Creek on the Yellowstone River. One hundred and nineteen lodges of Arapahoes, constituting the greater portion of the Northern Band of that tribe, arrived in June 1868 at Ft. Laramie from the Powder River country en route to the Southern Band of Arapahoes. There were still a number of Northern Arapahoes, consisting of about twenty-five lodges under Chief Medicine Man, encamped on the Crazy Woman's Fork of the Powder River.

Efforts were made in the summer of 1868 to remove Chief Friday and his band of Northern Arapahoes from a point about seventy-five miles north of Denver to the main body

of the nation but they were adverse to removal to a new home, preferring to remain on the Great Platte where they had so long resided. However, in 1869 this band of Northern Arapahoes, with that of Chief Medicine Man (about one hundred lodges) expressed a desire to join Washakie and his tribe of Shoshone Indians on the Wind River Reservation set apart for the Shoshones by the treaty of July 3, 1868, "and for such other friendly tribes or individual Indians as from time to time the Shoshones might be willing, with the consent of the United States, to admit amongst them." When Washakie was told of the matter mentioned by the Arapahoes he expressed surprise that the Arapahoes, who for years had been allied with the Sioux and Cheyennes against him, should now so suddenly wish to join him; but, as he remembered Chief Friday as a friend of his youth, and being impressed with the fact that Friday was asso- [fol. 63] ciated with the band of Northern Arapahoes, he agreed to meet the band that he might more fully understand their purpose. In October 1869 Friday and other chiefs of the Northern Arapahoes went with Major General Augur to the Shoshone Reservation to treat with Washakie for a home, but Washakie had gone on a hunt when they arrived and nothing was done. In February 1870 they again visited Washakie and the Shoshones and made peace with them, but Washakie and the Shoshones refused to agree to permit the Arapahoes to live on part of their reservation; however, Washakie agreed to permit the Arapahoes to come upon the reservation for a short time in order that he might thereby assist the Government in making permanent disposition of them. The band, under Friday, comprised many decrepit men and women, and young children. Under this arrangement with Washakie the Northern Arapahoes came to and remained on the Shoshone Reservation until March 31, 1870, when a massacre of settlers and miners occurred on the Sweetwater River, near the reservation on the east, which was believed to have been perpetrated by these Arapahoe Indians although they denied knowledge of the matter.

April 8, 1870, a company of settlers, meeting thirteen Northern Arapahoes under Chief Black Bear, in retaliation killed him and ten of his party. Thereupon it was suggested by the officials of the Indian Department that the Northern Arapahoe Indians occupy the country about old Ft. Casper, as they had expressly declared they would not

go to either of the reservations provided for them under the treaty of May 10, 1868. It was also suggested that they be sent to the Gros Ventres Agency on Milk River. They decided to go to old Ft. Casper, about one hundred and seventy-five miles from the Red Cloud Agency, and, accordingly, they were removed from the Shoshone Reservation. The Northern Arapahoes did not remain upon the reservation provided for them and repeated efforts, during the period 1851 to 1878, to place them in settled homes were without success. They were known to be traditional enemies of the Shoshones.

In 1873 there were about 2,757 Northern Arapahoe and Cheyenne Indians under the Red Cloud Agency. A number of Arapahoes who left the Red Cloud Agency, going east early in 1873, were charged with the Rawlings Spring massacre. The Indian Department of the Government insisted upon the removal of the Arapahoes and Cheyennes from the Red Cloud Agency to the Indian Territory. About that time the Sioux War broke out—many of the Northern Arapahoes being affiliated with the Sioux. After the surrender of the main portion of the hostile Sioux and other tribes, the Cheyennes at the Red Cloud Agency were removed to Indian Territory in May 1877.

9. The record does not disclose exactly what happened to the Northern Arapahoe Indians between the time they removed from the Shoshone Reservation early in 1870 until late in 1877, except that they were not located upon any defined reservation. It appears that in 1877 these Indians were in the vicinity of old Ft. Casper, but they apparently were not being furnished food, clothing, or supplies by any Indian agency.

December 4, 1877, the Commissioner of Indian Affairs instructed Patten, agent of the plaintiff tribe of Indians on the [fol. 64] Shosho.. Reservation in Wyoming, to go to Ft. Fetterman, Wyoming, fifty miles east of old Ft. Casper, to distribute food and clothing to the Northern Band of Arapahoe Indians, who would be at Ft. Fetterman by the time he arrived there. This matter and the subsequent movement of the Northern Arapahoe Indians will hereinafter be referred to more fully.

10. About October 1, 1877, a delegation of the Sioux and Arapahoe Indians visited Washington and called upon the Commissioner of Indian Affairs and the President, and the

matter of their location upon some reservation was discussed. James Irwin, who had previously been agent for the Shoshones, but who was then the Indian agent at the Red Cloud Agency, which then had supervision over the Northern Arapahoe Band of Indians, was present. He had been instructed on September 12, 1877, to come to Washington with this delegation and to bring his interpreter. October 4, 1877, the Commissioner of Indian Affairs requested the Secretary of the Interior that "Dr. James Irwin, Indian agent at Red Cloud Agency, be authorized to proceed to the Shoshone Reservation in Wyoming and consult with the Indians there, with the intent to gain their consent to permit the Arapahoes (now at Red Cloud Agency) to remove to their (the Shoshone) reservation, both tribes to be under the control of one agent." The requested authority was given, and on the same day the Commissioner of Indian Affairs wrote Irwin at the Grand Central Hotel, New York, to "proceed at once to the Shoshone Reservation to consult with the Indians there, with the intent to gain their consent to the removal of the Arapahoes thither, both tribes to be under the care of one agent. You will represent to them the advantage of having a neighboring friendly tribe associated with them, and from your large experience with the Shoshones will be able to present such arguments as will obtain their ready consent to the proposed arrangement." James Irwin had been an Indian agent for a considerable time prior to this date and was well acquainted with and highly respected by many Indian tribes, including the Shoshones. He had previously been agent for several years for the Shoshones on the Wind River Reservation.

Irwin proceeded to the Shoshone Reservation, of which James I. Patten was then in charge as Indian agent. Agent Irwin held a council with Chief Washakie and the Shoshone Indians, at which council were present James I. Patten, agent; Capt. E. M. Hayes, U. S. A., commander of Camp Brown, located on the Shoshone Reservation; Capt. Woodson; Lieutenants S. A. Cherry and H. S. Bishop, U. S. A.; James K. Moore, post trader, Camp Brown; R. B. Frimes, post surgeon, Camp Brown; the agency physician and other citizens and employees on the reservation. Agent Irwin discussed with Chief Washakie and the Shoshones the matter of the contemplated removal of the Northern Arapahoe Band of Indians from their then location, but distinctly told Chief Washakie and the Shoshones that the President

had no intention of placing the Arapahoes on the reservation of the Shoshones, and that this was not the design of the Government; that all that was desired was that the Shoshones make peace with the Northern Arapahoe Tribe of Indians and that the Department would have a piece of land near the mouth of the Sweetwater, near the eastern [fol. 65] boundary line of the Shoshone Reservation, set apart for the Arapahoes; that although the agent of the Shoshones would be agent of the Arapahoes also, yet the Government did not intend to place the Arapahoes directly on the Shoshone Reservation. This, as stated by Irwin at the time, was in accordance with the promise of the President to the delegation of Northern Arapahoe Indians on their visit to Washington in October 1877. In these circumstances Chief Washakie and the Shoshones agreed to make peace with the Arapahoes and informed Agent Irwin that they had nothing to say against their agent being over the Arapahoe Tribe also, but that they wanted the Arapahoes placed on a reservation apart from the Shoshones, giving as their reason therefor that the reservation, as at that time, was none too large for the use of the Shoshones, and, furthermore, that the Shoshones were afraid that the two tribes would not agree well together—that the Arapahoes would probably ill-behave themselves and bring trouble upon the Shoshones. At the same time, Irwin informed Agent Patten, of the Shoshone Reservation, that "the President promised the Arapahoes a reservation at the Red Buttes, including the mouth of the Sweetwater, and that is what the Arapahoes wanted, and that the agent of the Shoshones should be their agent, and that is * * * all the President will ask to have done." Agent Irwin did not ask the Shoshones to express their willingness to admit the Band of Northern Arapahoe and Cheyenne Indians amongst them upon their reservation or to consent to the placing of the Indians upon the Shoshone Reservation, either temporarily or permanently, and the Shoshone Tribe of Indians did not at that time, or at any time thereafter, express their willingness or give their consent to admit the Arapahoe Indians amongst them as permanent occupants. Agent Irwin, after his council with Chief Washakie and the Shoshone Indians, as above set out, sent a telegram to the Commissioner of Indian Affairs at Washington, dated Cheyenne, Wyoming, October 17, 1877, in which he stated, "I returned from Shoshone Agency today. Held

council and made peace between Shoshones and Arapahoes." The details of the council between the Shoshones, Irwin, and Patten, as above set forth, were reported to the Commissioner of Indian Affairs by Patten in a written report dated February 21, 1878. None of the Northern Band of Arapahoes arrived at the Shoshone Reservation until March 18, 1878, as hereinafter mentioned. After the conference of Irwin and Patten with the Shoshones about the Arapahoe Indians, nothing further occurred until December 4, 1877, when the Acting Commissioner of Indian Affairs wired Agent Patten of the Shoshone Reservation to proceed to Ft. Fetterman to receive and distribute certain supplies to the Northern Arapahoe Indians who were then, or would be, at Ft. Fetterman. Patten proceeded to Ft. Fetterman and inasmuch as neither the supplies nor the Indians had arrived at that point he secured means of transportation and proceeded to the camp where the Northern Band of Arapahoes was then located on their way to Ft. Fetterman and conferred with the Indians and Chiefs Black Coal, Friday, and Plenty Bear. Patten informed these Indians that he had come to distribute supplies to them and alluded to their being located upon a reservation where they could be better looked after by the Government. Chief [fol. 66] Black Coal referred to the visit of a delegation to Washington the preceding fall and to the fact that the President had promised to give them an agent; that for four years his tribe had wished to have an agent and a reservation of their own, and that they were now willing to go upon a reservation. Patten found this band of Indians very poorly equipped, destitute, and hungry, and before leaving Ft. Fetterman he arranged for distribution to them of 2,600 rations from military supplies; thereupon he was instructed to return to the Shoshone Reservation. He arrived there January 13, 1878.

Patten, in his report of January 17, 1878, to the Commissioner of Indian Affairs of his trip to Ft. Fetterman, stated that the telegram of December 4, 1877, instructing him to proceed to Ft. Fetterman to distribute supplies to the Arapahoes was "the first intimation received that these Indians were to be placed under my charge", and concluded with the statement that "I most respectfully request that full instructions be given me in relation to Arapahoe Indians, whether they are to be placed on the Shoshone Reservation, either temporarily or

permanently, and that in either case a permanent peace be made between the Arapahoe and all other tribes with whom they are not now on such terms before they come in." No reply was made to this request.

On February 21, 1878, Agent Patten again wrote the Commissioner of Indian Affairs, referring specifically to the council with the Shoshones held by James Irwin the preceding October, calling attention to the fact that at that council the Shoshones had not expressed their willingness to admit the Arapahoes amongst them nor consented thereto, and again asked for instructions concerning the matter, to which no reply was made. The Northern Band of Arapahoe Indians was then being brought from Ft. Fetterman to the Shoshone Reservation under military escort. Some of them arrived there March 18, 1878, without any previous knowledge to the Shoshones of their coming. Their arrival caused considerable excitement amongst the Shoshones, resulting in demonstrations in the Shoshone village, at which the Arapahoes, believing there would be trouble, became frightened. A delegation of Arapahoes, consisting of Black Coal and ten of his young men, came to the Shoshone Agency, the remainder of the Northern Band of Arapahoes being then camped some distance from the reservation. The principal military officers in charge of the military forces stationed in the Indian country protested to the Commissioner of Indian Affairs with reference to the removal of the Arapahoe Indians to the Shoshone Reservation and insisted that the Arapahoes should be removed to the Indian Territory. Patten suggested to the Department at Washington that action be speedily taken to place the Arapahoes on land of their own. In his telegram to the Commissioner of Indian Affairs March 18, 1878, Patten advised that the Arapahoes were "anxious to get located upon their reservation, wherever it is to be", and stated that they were greatly in need of food and supplies. He asked for immediate instructions. On April 2 the Commissioner of Indian Affairs wired Patten with reference to furnishing food and supplies to the Arapahoes, and instructed him to "report fully by mail what other measures are necessary to locate the Band of Northern Arapahoe Indians under Black Coal." On March 19, 1878, Chief Washakie and a number of Shoshones met the

[fol. 67] Arapahoe delegation at the agency with Black Coal, the main chief, and Sharp Nose, White Horse, Six Feathers, and Friday, the latter being able to speak English. After some discussion between the Shoshones and Arapahoes the latter explained to Chief Washakie that their horses and their traveling equipment were in very bad condition; that their horses needed food and rest; that the Arapahoes were without food, and that many of their number were sick; whereupon the Shoshones, through Chief Washakie, remembering their council with Irwin and Patten the preceding October, informed the Arapahoe chiefs that they might remain there for only a brief visit, but that they would have to leave as soon as they had rested and fed their horses. The Arapahoes stated that they could not possibly return to the place they had come from and asked Washakie to grant them permission to remain there for a little longer period than for a brief visit, so that their horses could be fed and rested, and that they would then remove from the reservation. They explained to Washakie that many of the Arapahoes had no horses at all; that they understood that the Government was preparing a reservation for them near the mouth of the Sweetwater River, and that they would go to this place as soon as possible. Thereupon, Chief Washakie stated to the Arapahoe delegation that he would permit them to come upon the Shoshone Reservation and remain there for a short time to rest for awhile and feed their horses. At this meeting the matter of the settlement of the Arapahoes upon the Shoshone Reservation was not mentioned and Washakie and the Shoshones were not then, or thereafter, requested to admit the Arapahoes amongst them upon the Shoshone Reservation. April 8, 1878, Agent Patten reported to the Commissioner of Indian Affairs that most of the Northern Arapahoe Tribe were then on the Shoshone Reservation and in reply to the Commissioner's telegram of the 2d, asking him to report fully by mail what other measures were necessary to locate the band of Northern Arapahoe Indians on the Shoshone Reservation, stated that he did not believe that much difficulty would be experienced in settling that tribe upon the Shoshone Reservation—that "the Shoshones, although they are opposed to it and look upon it as an encroachment on their rights, yet will make no great objections to the settle-

ment of the former tribe upon their land, knowing that it is the wish of the Great Father to bring several small bands of Indians together on the same reservation. Washakie and the head men, though they dislike bitterly to divide their property with other bands, have too great hearts to say No. But my sense of right and justice is that, if other tribes are brought upon the Shoshone land, it should be with the full consent of the tribe owning the land by rights of their treaty, and that such Indians should receive reasonable compensation for relinquishment of their reservation. I would therefore earnestly recommend that the Shoshones be allowed a just sum for the relinquishment of a certain tract of land, within the limits of their reservation, to the Northern Arapahoes." After stating that the Arapahoes were in a famished condition and that he had purchased additional food and supplies for them, he informed the Commissioner of Indian Affairs that "the Shoshones are not all in favor of allowing the Arapahoes a portion of this reservation. They claim that they hold [fol. 68] this land by right of their treaty made with the Government at Ft. Bridger in 1868, that the Government has no right to abrogate the same without the consent of the Shoshones"; that the Shoshones, however, had agreed to allow the Arapahoes to remain there for a short time and that both tribes wished the Department Commander, General Crook, to be present at a council to be held between the tribes at the agency on some convenient date in that month to have the matter of the location of the Arapahoes permanently settled. No reply was made by the Interior Department to this and many other reports of the agent calling attention to the persistent claims of the Shoshones that the Arapahoes were wrongfully upon that reservation and no steps were taken by the Department towards obtaining the consent of the Shoshones to admit the Arapahoes amongst them or to place the Arapahoes elsewhere. No action was taken by any official of the United States or the Interior Department concerning the location of the Arapahoes until August 1891, when the Commissioner of Indian Affairs definitely held that the Arapahoes had equal rights with the Shoshones on the Shoshone Reservation, as hereinafter mentioned.

After the Arapahoes had camped upon the reservation, fed their horses, and had been furnished food and supplies

by the agency for several months, the Shosnone Tribe, through Chief Washakie, began to protest to the agent against their continued presence upon the Shoshone Reservation. Such protests were thereafter continued and were mentioned from time to time in the reports of the Indian agent to the Commissioner of Indian Affairs, but no action was taken thereon. The Arapahoes remained on the Shoshone Reservation, used and occupied the same equally with the Shoshones, pastured their stock and engaged in farming thereon, and received the benefits of all facilities and services equally with the Shoshones.

11. No definite action was ever taken by the officials of the Government with reference to the permanent settlement of the Arapahoes until August 13, 1891. Shortly prior to that date a commission, known as the "Woodruff Commission", had been sent to the Shoshone Reservation to negotiate for a cession of such portion of the reservation as the Indians chose to dispose of. On August 5, 1891, the chairman of the Commission wrote the Commissioner of Indian Affairs asking for instructions as to how the Commission should treat with the Indians, inasmuch as Chief Washakie and the Shoshones denied that the Arapahoes had any rights to or upon the reservation. He stated that the Shoshones insisted that the Arapahoes came there merely as temporary visitors; that the claim of the Shoshones to the whole of the reservation was backed by Dr. James Irwin, who was present and discussed the matter of the presence of the Arapahoes with Chief Washakie and the Shoshones shortly before their arrival at the Shoshone Reservation in March 1878. In reply the Commissioner of Indian Affairs, on August 13, advised the Commission that "this office holds * * * that the Arapahoes have equal rights to the land on the said reservation which does not depend upon the further consent of the Shoshones, and you should conduct your negotiations with them upon that basis and with that understanding." This is the only action ever taken by anyone representing the [fol. 69] United States with reference to the permanent settlement and location of the Northern Arapahoe Band of Indians upon the Shoshone Reservation. Notwithstanding the continued protests of the Shoshones, the Woodruff Commission proceeded to counsel alike with the Shoshone and the Arapahoe Indians. The result of these negotiations

will be further referred to hereinafter. The ruling made by the Commissioner of Indian Affairs on August 13, 1891, has ever since been enforced by the Interior Department. No action, except the enactment of the Jurisdictional Act in this case, was ever taken by Congress with reference to the presence of the Arapahoe Indians upon the Shoshone Reservation.

12. Prior to the execution of the Shoshone Treaty, July 3, 1868, gold had been discovered at a point near the boundary line of the Shoshone Reservation on the south end of the Wind River Mountains and the gold-mining district extended within the boundary line of the reservation as fixed in the treaty and a large quantity of gold was removed from the mines on the reservation by persons engaged in that enterprise. As a result of this intrusion, Felix R. Brunot was appointed a commissioner to negotiate with the Shoshone Indians for the cession of a portion of the reservation located in the gold-mining district. The best gold mines in the district had been found to be located within the reservation. As a result, Brunot obtained an agreement from the Shoshones ceding 700,642 acres of the reservation for a total consideration of $27,500. At that time the Indians had no conception of the value of money or the value of the property they were surrendering to the Government and they accepted, without question, Brunot's first offer of the amount stated. With reference to the consideration to be paid for this cession, Brunot reported to the Commissioner of Indian Affairs that "Acting upon my experience of the general habit of Indians, the Shoshones were offered a sum as the basis of further negotiation, and which I supposed would have to be increased to meet the demand of the Indians. When the terms first offered were promptly accepted, I did not feel at liberty to make an addition it seems eminently proper to solicit from Congress." No further amount was ever paid for this cession.

Between July 3, 1868, the date of the treaty, and 1874, when the cession agreement above mentioned was ratified, gold of the value of $500,000 was mined and removed from land within the boundary of the undiminished reservation. After this cession the diminished reservation contained 2,343,540 acres.

13. The Woodruff Commission, hereinbefore referred to, sent to negotiate with the Indians for a cession of a portion of their reservation in 1891, finally obtained an agreement signed by certain of the Indians agreeing to sell approximately 1,100,000 acres of land for a consideration of $600,000, with interest at 5 percent per annum offered by the commission. The land specified in that agreement was north of the Wind River. This land was not as fertile or as valuable as that on the southern and eastern portions of the reservation. The commissioners representing the United States in the negotiation of this agreement were in disagreement with respect thereto, and the same was never ratified by Congress. Efforts were made by this commission to obtain from the Indians a cession of substantially the same area of land south of the Wind River, for which an offer of $775,000 was made, [fol. 70] but the Indians refused on the ground that the land south of Wind River was much more valuable.

14. The next agreement ceding 55,040 acres of land embracing the Big Horn Hot Springs was on April 21, 1896, approved June 7, 1897, 30 Stat. 62. This land was located in the northeast corner of the reservation. This agreement was negotiated and made on behalf of the United States by James McLaughlin, U. S. Indian inspector, who was well known to the Shoshone Indians. He had considerable difficulty in carrying on negotiations with the Shoshone and the Arapahoe Indians by reason of the protests and objections of the Shoshone Indians to the presence of the Arapahoe Indians in council with them and to their presence upon the reservation—the Shoshones insisting that the Arapahoes were not rightly on that reservation and that they had no rights in the reservation lands. It was only after McLaughlin agreed to insert a provision in the agreement protecting the rights of the Shoshones under the existing agreements and treaty stipulations that he was able satisfactorily to carry on his negotiations. Accordingly, he inserted in the agreement, which was signed and ratified, art. 4, which provided that "Nothing in this agreement shall be construed to deprive the Indians of any annunities or benefits to which they are entitled under existing agreements or treaty stipulations." The consideration agreed to be paid, and which was paid, for this cession of 55,040 acres of land was $60,000. After this

cession the diminished reservation consisted of 2,288,500 acres of land.

15. In April 1904 Inspector James McLaughlin was again sent to negotiate with the Indians of the Shoshone Reservation for the purpose of securing an agreement ceding a portion of the Wind River Reservation to the Government for the purpose of sale of such lands, the timber thereon, and other products of the reservation, and for the making of leases in respect thereof for various purposes. The proceeds derived from such ceded lands were to be credited to the Indians entitled thereto. In his negotions Inspector McLaughlin met with the same situation respecting the objections of the Shoshones to the presence of the Arapahoes upon the reservation and in the councils that he had encountered in 1896, and this was overcome by promising the Shoshones that he would insert in whatever agreement was reached a provision protecting their rights under their treaty and prior agreements. This was done. As a result of the negotiations an agreement was concluded April 21, 1904, approved March 3, 1905, 33 Stat. 1016, between McLaughlin, representing the United States, and the Shoshone and the Arapahoe Tribes of Indians ceding to the United States, for the purposes mentioned, 1,480,000 acres of land on the east of the diminished reservation, leaving 808,500 acres. No further cessions have been made.

16. It was known in 1891 that the Shoshone Reservation contained a large, but undetermined, quantity of coal, oil, and gas, phosphate and gypsum. The fair and reasonable value of a one-half undivided interest of the Shoshone or Wind River Reservation on August 13, 1891, was $2,050,597.50. The fair and reasonable value of use and occupancy of an undivided one-half of the Shoshone Reservation by the Northern Arapahoe Indians was $332,475. The population of this tribe averaged 1,023 a year from March 18, 1878, to August 13, 1891. [fol. 71] The respective population of the Shoshone and the Northern Arapahoe Tribes of Indians from 1878 to date has been approximately equal.

17. During the period from 1873 to 1894 several thousand cattle and horses belonging to persons other than the Shoshone and the Arapahoe Indians annually came upon,

grazed, and ranged on or over the reservation, and, in some instances, damaged the crops and foodstuffs belonging to plaintiff tribe of Indians. The evidence does not establish that the Government did not use its best efforts to keep this stock off the reservation.

18. During the period 1869 to 1909, inclusive, the Government maintained a military post of soldiers and cavalry on the Shoshone Reservation, which post embraced an area of about 1,400 acres. This was one of the several military posts stationed at that time in the western country to maintain peace among the Indian tribes and to protect the white people from hostile tribes of Indians. During this period the officers of the military post used large quantities of wood and hay from the Shoshone Reservation. The Indians on the reservation were authorized to furnish the wood needed by the military post and were paid for the same. In addition, the Shoshone Indians, a few years after they were located on the reservation, were given contracts for transportation of wood to the military post and were, accordingly, paid for such services. Payments were likewise made for hay.

19. Shoshone Treaty appropriations and disbursements. —During the period July 1, 1867, to June 30, 1927, Congress appropriated a total of $1,375,665.34 for the purpose of carrying out the stipulations of the treaty of July 3, 1868, with plaintiff tribe. A total of $806,622.26 was disbursed for the purposes specified in the treaty and charged to the Shoshones and $33,806.24 was disbursed in payment for transportation of goods and supplies which under art. 2 the United States agreed to furnish and deliver on the reservation. The latter amount was charged to the Shoshones jointly with the Bannock Tribe of Indians as an expenditure under art. 9 of the treaty. The total disbursements pursuant to the treaty were, therefore, $840,428.50. The amount of $245,980.98 of the unexpended balance of the total appropriations was returned to the Treasury by surplus warrants and $288,053.84 was accounted for through certain transfers and expenditures for the Bannocks, leaving a balance of $1,202.02 on hand.

The total treaty disbursements up to and including the fiscal year ended June 30, 1877, were $278,993.42. The total treaty disbursements from 1878, when the Arapahoes moved

to the reservation, to June 30, 1927, amounted to $561,435.08. [fol. 72] The amounts expended by the United States under the various articles of the treaty of 1868 and charged to the account "Fulfilling treaty with the Shoshones", were as follows:

Article	Purpose	Amount
3	Agency buildings	$ 18,635.42
7	Education	6,270.97
9	Education	4,188.34
10	Education	21,164.47
8	Seeds and implements	1,000.00
9	Clothing, supplies, provisions, etc., and annuities	487,719.56
10	Skilled employees	267,593.50
9	Transportation of treaty supplies	33,806.24
11	Prizes	50.00
	Total	840,428.50

No annuity goods or provisions which the United States agreed to furnish plaintiff tribe under the treaty of July 3, 1868, were diverted to or disbursed to the Northern Arapahoe Indians. Separate appropriations for annuity goods and provisions for the Northern Arapahoes were made by Congress from year to year under their treaty of May 10, 1868, and the Black Hills Agreement of 1877 with the Sioux in the benefits of which the Northern Cheyenne and Northern Arapahoes shared.

20. After the Arapahoes arrived on the reservation in March 1878, they shared in the educational expenses provided for and disbursed under the Shoshone Treaty to the extent of $2,645.73. The Arapahoes also shared equally with the Shoshones the services of skilled employees furnished and paid for under art. 10 of the Shoshone Treaty of July 3, 1868, to the extent of $128,801.55, being one-half of the treaty disbursements for skilled employees and certain other agency expense under the same article from 1878 to 1927, inclusive. The Arapahoes also shared equally with the Shoshones in treaty disbursements totaling $3,962.30 for miscellaneous agency buildings, repairs, expenses, fuel and light, and for Indian police disbursed under art. 9. The evidence does not show that the employees and facilities furnished plaintiff tribe by the United

States under the treaty of July 3, 1868, were not adequate for such tribe.

21. Under the agreement of September 26, 1872, 18 Stat. 291, hereinbefore mentioned, in which plaintiff tribe ceded a portion of its reservation in the gold-mining district to the United States for a consideration of $27,500, the record discloses that $27,485.50 was paid to or expended for the benefit of the plaintiff tribe in accordance with the provisions of the agreement, leaving a balance of $14.50 which was covered into the Treasury by a surplus warrant of June 30, 1879.

22. Under the agreement of April 21, 1896, 30 Stat. 93, covering the Big Horn Hot Springs cession of 55,040 acres, in which agreement the Arapahoe Indians were permitted to participate, over the protest of the plaintiff tribes, Congress appropriated the consideration of $60,000 therein mentioned. Arts. 2 and 3 of this agreement follow:

"Article II

"In consideration for the lands ceded, sold, relinquished, and conveyed as aforesaid, the United States stipulates and agrees to pay to the said Shoshone and Arapahoe tribes of Indians the sum of sixty thousand dollars, to be expended for the benefit of the said Indians in the manner hereinafter described.

"Article III

"Of the said sixty thousand dollars provided for in article II of this agreement it is hereby agreed that ten thousand dollars shall be available within ninety days after the ratification of this agreement, the same to be distributed per capita, in cash, among the Indians belonging on the reservation. That portion of the aforesaid ten thousand [fol. 73] dollars to which the Arapahoes are entitled is, by their unanimous and expressed desire, to be expended, by their agent, in the purchase of stock cattle for distribution among the tribe, and that portion of the before-mentioned ten thousand dollars to which the Shoshones are entitled shall be distributed per capita, in cash, among them: Provided, That in cases where heads of families may so elect, stock cattle to the amount to which they may be entitled may be purchased for them by their agent.

"The remaining fifty thousand dollars of the aforesaid sixty thousand dollars is to be paid in five annual installments of ten thousand dollars each, the money to be expended, in the discretion of the Secretary of the Interior, for the civilization, industrial education, and subsistence of the Indians; said subsistence to be of bacon, coffee, and sugar, and not to exceed at any time five pounds of bacon, four pounds of coffee, and eight pounds of sugar for each one hundred rations."

Of the total consideration the sum of $20,553.22 was expended under art. 2 for the following purposes and charged directly to the plaintiff tribe:

1. Per capita payments	$4,966.88
2. Provisions and other rations	14,056.35
3. Agricultural implements and equipment	1,139.80
4. Fuel and light	363.33
5. Hardware, glass, oil and paints	26.86

The amount of $3,960.97 was expended under art. 3 for the following purposes and charged to the plaintiff and the Arapahoe Tribe jointly:

1. Agricultural implements	$1,822.61
2. Grist mill	976.70
3. Miscellaneous employees	215.00
4. Expenses of delegation	889.38
5. Education: Provisions	57.28

The amount of $34,948.58 of the total consideration of $60,000 was disbursed by the Government and charged directly against the Arapahoe Tribe of Indians. The accounting submitted by the defendant does not show the nature and purposes making up this expenditure for the Arapahoe Tribe. It appears, however, that a portion of the amount charged to the Arapahoes was used to purchase cattle for them. The amount of $16.86 of the remainder of the $60,000 was disbursed for the Jamez Day School, Pueblo Agency, leaving an unexpended balance of $520.37 on hand as of June 30, 1927. The Arapahoes were entitled to only one-half of the total consideration paid under this agreement. Plaintiff tribe was therefore entitled to an additional credit of $7,661.84.

23. The agreement of April 21, 1904, 33 Stat. 1016, hereinbefore mentioned, ceded 1,480,000 acres of land which the United States under art. 2 agreed to sell and lease for the benefit of the Indians belonging to the Shoshone or Wind River Reservation. By subsequent articles, as amended by the act of March 3, 1905, ratifying the agreement, the United States agreed to expend certain of the proceeds derived from the ceded portion for the benefit of the Indians and to hold the balance in trust at four-percent interest, the interest to be expended annually for the benefit of the Indians.

The representative of the Government permitted the Arapahoe Indians to take part in the negotiation and signing of this agreement under the definite ruling of the Com- [fol. 74] missioner of Indian Affairs in August 1891 that they had that right. The plaintiff tribe proceeded with the negotiations leading to the execution of this agreement, and, upon the demand of the Government representative, permitted the Arapahoes to participate in the councils with reference thereto and in the execution of the agreement, but only upon condition that the agreement contain the provision which had been inserted in the agreement of April 21, 1896, to the effect that nothing in the agreement should be construed to deprive the Indians of any annuities or benefits to which they were entitled under existing agreements or treaty stipulations. A total of $314,746.34 was received by the Government under this agreement to June 30, 1927, and carried in the account "Proceeds of Wind River Reservation, Wyoming." In addition to the amount of $85,000 for per capita payments, appropriated in sec. 3 of the act ratifying the agreement, to be reimbursed from the first proceeds of sale of ceded lands, Congress appropriated the amount of $200 for this purpose, which was also to be reimbursed. Additional reimbursable appropriations were also made for (1) surveying the reservation; (2) irrigation system; and (3) roads and bridges. All of the reimbursable disbursements made from the proceeds received under this agreement to June 30, 1927, have been repaid except $100 of the item of $82,200 for annuities. The amount of $311,516.37 of the total of $314,846.34 received from the sources mentioned in this agreement was disposed of as follows, leaving a balance of $3,329.97 on hand:

Surveying	$34,659.19	
Opening reservation	8,325.64	
Commissions on land sales	1,465.57	
Repayments of purchase money	935.91	
		$45,386.31
Irrigation	73,471.05	
Roads and bridges	50,293.68	
		123,764.73
Shoshone annuities		41,900.00
Arrapahoe annuities		43,300.00

24. By the act of March 3, 1883, 22 Stat. 582, 590, it was provided that "The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the Five Civilized Tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session."

By the act of March 2, 1887, 24 Stat. 449, the Secretary of the Interior was given authority to use such monies "for the benefit of the several tribes on whose account said monies were covered in", and the act of May 18, 1916, 39 Stat. 123, provided how these funds should be handled in the future. From 1884 to 1913 the monies collected from sources originating in the land, including pasturage, sales of cattle, hides, timber, coal, and from oil and gas royalties under the act of March 3, 1883, were credited to the Shoshone and Arapahoe Indians in separate accounts under the title "Indian monies—Proceeds of labor." From 1913 to 1927, inclusive, monies received from these sources were [fol. 75] deposited in the fund to the joint credit of the Shoshone and the Arapahoe Tribes. From July 1, 1884, to June 30, 1927, there has been collected and deposited in the fund a total of $1,628,744.56 and credited to the Shoshone and Northern Arapahoe Tribes as follows:

Shoshone Tribe	$97,985.20
Northern Arapahoe Tribe	100,686.62
Shoshone and Northern Arapahoe Tribes jointly	1,430,072.74
	1,628,744.56

During the period above mentioned disbursements were made out of this fund in the amounts of $260,235.27 charged to plaintiff tribe; $293,938.57 charged to the Northern Ara-

pahoe Tribe; $962,568.98 charged to the two tribes jointly; and $64.12 for the Western Shoshones at Ft. Hall, Idaho, leaving a balance of $111,937.62 on hand. Among the items making up the total disbursements, as above mentioned, there were the following:

Purpose of disbursement	Charged to Shoshones	Charged to Arapahoes	Charged jointly
Agency buildings and repairs, jointly	.....	.....	$13,668.54
Expenses of delegations	$1,870.60	$2,916.17	.20
Fuel and light	515.40	361.40	50,817.64
Indian police:			
Arms and ammunition	.....	.....	14.75
Clothing	.....	.....	16.00
Irrigation	.....	.....	1,183.03
Miscellaneous agency employees	4,470.41	2,799.51	97,845.45
Miscellaneous agency expense	896.42	366.09	37,987.69
Pay of special officer	.....	.....	5,683.25
Presents	75.00	73.00	190.65
For Western Shoshone Tribe at Fort Hall, Idaho	.....	.....	64.12

25. Offsets under gratuity appropriations and disbursements.—Section 3 of the Jurisdictional Act provided that "In said suit the court shall also hear, examine, and adjudicate any claims which the United States may have against said tribe, but any payment, including gratuities which the United States may have made to said tribe, shall not operate as an estoppel, but may be pleaded as an offset in such suit." During the period July 1, 1867, to June 30, 1927, the Congress appropriated and the Indian Department made gratuity disbursements totaling $1,223,266.26, of which $166,189.28 was charged against the plaintiff tribe directly and $1,057,076.98 against the Shoshone, Bannock, and Arapahoe Tribes jointly for the purposes and in the amounts following:

[fol. 76]

Schedule no.	Name of appropriation fund	Direct	Jointly with other Indians
1	Aiding Indian allottees, under act of February 8, 1887 (reimbursable)	$7,084.07	$1,500.00
2	Allotments, under act of February 8, 1887 (reimbursable)	.....	65,108.80
3	Asylum for Insane Indians, Canton, S. Dak.	.....	147.31
4	Buildings at agencies, and repairs	934.59	23,305.18
5	Care and protection of Indian timberlands	.....	2,478.60
6	Civilization fund	9,935.57	35,671.16
7	Contingencies, Indian Department	112.17	1,116.23
8	Experiments, Indian school or agency farms	.....	59.55
9	Fulfilling treaties with Sioux of different tribes, including Santee Sioux of Nebraska	37.50	.....
10	General expenses, Indian Service	.....	2,086.61
11	Incidental expenses of Indian Service in Utah Territory	399.54	.....

Schedule no.	Name of appropriation or fund	Direct	Jointly with other Indians
12	Incidental expenses of Indian Service in Wyoming	4,022.44	14,082.19
13	Incidentals in Wyoming	.....	13,672.66
14	Increase of compensation, Indian Service	8,534.30	31,745.73
15	Indian agency buildings	.....	6,296.94
16	Indian boarding schools	.....	65,136.45
17	Indian school buildings	10,159.85	5,124.30
18	Indian school and agency buildings	1,402.93	44,654.97
19	Indian school, Carlisle, Pa	500.59	.....
20	Indian school, transportation	.....	944.79
21	Indian schools in States	1,155.18	.....
22	Indian schools in States: Support	493.50	.....
23	Indian schools: Stock cattle	.....	455.00
24	Indian schools: Support	20,439.63	100,061.09
25	Industrial work and care of timber	48.69	101,259.08
26	Judgments, Indian depredation claims	1,400.00	.....
27	Maintaining peace among and with the various tribes and bands of Indians	4,457.34	4,758.50
28	Negotiating with Indians for lands	.....	299.38
29	New allotments, under act of February 8, 1887 (reimbursable)	.....	92.00
30	Pay of farmers	.....	42,221.79
31	Pay of Indian agents	.....	35,095.70
32	Pay of Indian police	4,570.48	94,224.13
33	Pay of interpreters	11,396.17	652.32
34	Pay of judges, Indian courts	.....	5,057.01
35	Pay of matrons	.....	9,146.50
36	Pay of superintendents and agents	1,105.25	10,510.69
37	Presents and provisions to Indians	125.00	.....
38	Purchase and transportation of Indian supplies	15,175.39	59,324.87
39	Relieving distress and prevention, etc., of diseases among Indians	.....	2,128.51
40	Stock cattle for Indian industrial schools	.....	2,872.50
41	Support of Arapahoes, Cheyennes, Apaches, Kiowas, Comanches, and Wichitas	.....	7,000.00
42	Support of Indian schools	.....	13,356.03
43	Support of schools not otherwise provided for	.....	493.22
44	Suppressing liquor traffic among Indians	.....	81.40
45	Surveying and allotting Indian reservations	.....	1,103.73
46	Surveying and allotting Indian reservations (reimbursable)	.....	50,119.84
47	Survey of Indian reservations	.....	1,057.60
48	Telegraphing and telephoning, Indian Service	.....	47.55
49	Telegraphing and purchase of Indian supplies	.....	165.10
50	Telegraphing, transportation, etc., Indian supplies	3,481.42	21,923.49
51	Transportation of Indian supplies	59,205.68	180,221.48
52	Vaccination of Indians	12.00	217.00
		166,189.28	1,057,076.98

26. All of the charges made directly against plaintiff tribe totaling $166,189.28, except $12,294.73 thereof, represented expenditures after the advent of the Arapahoe Indians upon the Shoshone Reservation. Of the last-mentioned amount of $12,294.73 charged directly against the plaintiff, the amount of $7,510.31 represented expenditures for purposes in the benefits of which the Bannock Tribe

shared equally with plaintiff during the time that tribe lived on the Shoshone Reservation. The population of the Bannock Tribe during the period they shared in expenditures for the Shoshones was 800 and that of plaintiff tribe during that time was 2,400. The amount of $4,784.42 of the above-mentioned $12,294.73 represented that portion of the total expenditure of $166,189.28 disbursed and charged directly against the plaintiff tribe before the [fol. 77] Arapahoe Tribe of Indians moved to the Shoshone Reservation. The Arapahoe Indians shared equally with the Shoshones in the benefits of $127,661.58 of the total expenditures charged directly to plaintiff for the purposes specified in items 4, 7, 14, 17, 18, 24, 26, 38, 50, 51, and $6,815.62 of item 33 of the above-mentioned tabulation.

27. The direct charges made against the plaintiff tribe out of expenditures for the period mentioned for purposes in which the Arapahoe Tribe did not share equally with the Shoshones total $38,527.70. Of the last-mentioned amount $7,510.31 represented expenditures for the benefit of the plaintiff tribe of Indians and the Bannock Indians jointly and on the basis of population of these two tribes during the time the Bannock Indians were on the Shoshone Reservation the amount of $2,503.44 represented the share of the Bannock Indians, leaving a total direct expenditure for the benefit of the plaintiff tribe of Indians, in the benefits of which neither the Bannocks nor the Arapahoes shared, of $36,024.26. The defendant is entitled to offset this amount against plaintiff.

28. With respect to the above-mentioned sum of $127,661.58, being that portion of the disbursements of $166,189.28 charged directly against the plaintiff tribe for purposes in the benefits of which the Arapahoes shared equally with the Shoshones, the defendant is entitled to an offset against plaintiff in the amount of $63,958.45 on the basis of the average annual population of plaintiff tribe to the total population of both tribes in the proportion of 50.18 percent for the Shoshones for the period 1878 to 1927, inclusive.

29. During the period July 1, 1867, to June 30, 1927, the United States appropriated and expended for the benefit of plaintiff tribe jointly with the Bannock and the Northern Arapahoe tribes on the Shoshone Reservation a total

of $1,057,076.98 which included the amount of $116,820.84 made reimbursable by the Act of February 8, 1887, but which amount has not been repaid.

The amount of $32,502.52 of the total joint charges of $1,057,076.98 represented expenditures made for the joint benefit of plaintiff and the Bannock tribes during the years July 1, 1867, to the fiscal year 1876, inclusive. The records are such that it is now impossible to determine what portion of this amount of $32,502.52 should be charged to plaintiff tribe. However, both tribes shared equally in the benefits, and, on the population basis, the plaintiff tribe should be charged with $10,834.17. The defendant is entitled to an offset of this amount in respect of this item.

On the basis of percentage of population of plaintiff tribe in each year during the period 1878 to 1927, inclusive, the defendant is entitled to an offset of $511,791.92 in respect of expenditures totaling $1,024,574.46 charged jointly to plaintiff and the Arapahoe Tribe.

30. During the fiscal years 1882 to 1921, inclusive, gratuity disbursements were made out of appropriations in the total sum of $4,147,322.55 for the benefit of the Shoshone and the Arapahoe tribes of Indians on the Shoshone Reservation in Wyoming. The sum of $611,842.22 of this amount was charged directly against the plaintiff tribe and $3,535,480.33 was charged against the Northern Arapahoe and plaintiff tribes jointly. The purposes for which these disbursements were made and the direct and joint charges were as follows:

[fol. 78]

Item nos.		Direct	Jointly with Northern Arapahoe Tribe of Indians	Totals
1	Agency buildings and repairs	.....	$4,213.97	$4,213.97
2	Agricultural aid	.....	636.01	636.01
3	Agricultural implements and equipment	$34,845.52	10.00	34,855.52
4	Care of livestock	502.72	.....	502.72
5	Clothing	6,153.19	.....	6,153.19
6	Education	1,791.34	1,004,350.43	1,006,141.77
7	Erection and repairs of mills and shops	1,771.66	.....	1,771.66
8	Feed for livestock	20,343.76	.....	20,343.76
9	Fencing and breaking land	7,736.09	.....	7,736.09
10	Fuel and light	18,324.15	.....	18,324.15
11	Hardware, glass, oils, and paint	14,360.58	465.16	14,825.74
12	Household equipment	5,888.66	.....	5,888.66
13	Irrigation	.....	2,264,123.00	2,264,123.00
14	Livestock	3,610.00	.....	3,610.00

Item nos.		Direct	Jointly with Northern Arapahoe Tribe of Indians	Totals
15	Medical attention	9,149.42	.....	9,149.42
16	Miscellaneous agency expenses	15,426.91	5.49	15,432.40
17	Miscellaneous building material	1,844.07	.....	1,844.07
18	Miscellaneous employes	25,443.75	.....	25,443.75
19	Pay of herders	1,391.82	.....	1,391.82
20	Presents	16.75	.....	16.75
21	Provisions and other rations	416,550.91	.....	416,550.91
22	Roads and bridges	15,650.31	250,455.07	266,105.38
23	Seeds	7,014.10	.....	7,014.10
24	Surveying	.....	1,400.00	1,400.00
25	Telephone line	.....	699.70	699.70
26	Transportation, etc., of supplies	4,026.51	.....	4,026.51
27	Payment to settlers	.....	9,121.50	9,121.50
		611,842.22	3,535,480.33	4,147,322.55

31. With reference to the amount of $611,842.22 charged directly against plaintiff, as above mentioned, the amount of $96,847.94 under items 7, 10, 11, 16, 17, 18, 22, and 26 of the above tabulation represented the total of disbursements directly charged to plaintiff for facilities and services in the benefits of which the Northern Arapahoe Indians shared equally with plaintiff tribe, and for which the record does not show any direct charge against the Northern Arapahoe Indians, leaving a balance of $514,994.28 which the defendant is entitled to offset against plaintiff.

With respect to the above-mentioned amount of $96,847.94, the defendant is entitled to offset against plaintiff the amount of $49,198.75 on the basis of the average annual population of plaintiff tribe of 50.8 percent during the period 1882 to 1921, inclusive.

32. In the expenditures for the benefit of and charged jointly to plaintiff tribe and the Northern Arapahoe Tribe in the sum of $3,535,480.33, which was disbursed during the period July 1, 1882, to June 30, 1927, there was included disbursements of $235,963.07 during the years 1913 to 1927, inclusive, for roads and bridges on the Shoshone Reservation, which was made reimbursable by the acts authorizing such expenditures.

By the act of July 1, 1932 (47 Stat. 564), it was provided: "That the Secretary of the Interior is hereby authorized and directed to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a

way as shall be equitable and just in consideration of all the circumstances under which such charges were made. * * * Provided further, That any proceedings hereunder shall not be effective until approved by Congress unless Congress shall have failed to act favorably or unfavorably thereon by concurrent resolution within sixty [fol. 79] legislative days after the filing of said report, in which case they shall become effective at the termination of the said sixty legislative days."

On December 15, 1932, the Secretary of the Interior reported to Congress that the outstanding indebtedness for roads and bridges on the Shoshone Reservation was $131,492.50 and recommended that the entire amount of the unpaid reimbursable balance he canceled. Congress not having disapproved this recommendation within sixty legislative days after December 1932, the outstanding reimbursable balance was no longer a charge against the Shoshone Tribe of Indians, as appears from the statement of the Commissioner of Indian Affairs of July 10, 1933, that "In accordance with the terms of the act of July 1, 1932, this sum is no longer regarded as a reimbursable charge against the tribal funds."

The aforementioned expenditures of $3,535,480.33 also included disbursements for "Irrigation System, Wind River Diminished Reservation, Wyoming", totaling $2,264,123, made during the period 1906 to 1927 and more than one-half of which was expended in the years 1918 to 1925. Of this last-mentioned amount, expenditures totaling $1,582,285.25 were made reimbursable by the appropriation acts under which that amount was expended.

33. Allotments of land on the diminished reservation were made to the Shoshone and Arapahoe Indians in severalty and during the period 1907 to 1919, 245,058 acres had been allotted. By the act of August 1, 1914, 38 Stat. 582, it was provided that the costs of irrigation systems incurred by the Government, before or after the date of the act, were to be assessed against the landowners who were to receive the benefits of the irrigation. Under this act the cost of such irrigation development was transferred from the tribe to the individual Indian allottee having irrigable land under any project on the reservation. The act pro-

vided that "all moneys expended heretofore or hereafter under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under such rules and regulations as the Secretary of the Interior may prescribe." Apportionment of such irrigation construction cost was directed by the act of February 14, 1920, 41 Stat. 408, and the apportionment was made and approved by the Department. That act provided that "The Secretary of the Interior is hereby authorized and directed to require the owners of irrigable land under any irrigation system heretofore or hereafter constructed for the benefit of Indians and to which water for irrigation purposes can be delivered to begin partial reimbursement of the construction charges, where reimbursement is required by law, at such times and in such amounts as he may deem best; all payments hereunder to be credited on a per-acre basis in favor of the land in behalf of which such payments shall have been made and to be deducted from the total per-acre charge assessable against said land."

In order to insure the United States reimbursement for the advancement of money for the construction, operation, and maintenance of irrigation projects on the Shoshone Reservation, Congress, by the act of March 7, 1928 (45 Stat. 210), created a lien on the land of allottees under the [fol. 80] Shoshone Indian irrigation projects. This act provided as follows: "That the costs of irrigation projects and of operating and maintaining such projects, where reimbursement thereof is required by law, shall be apportioned on a per-acre basis against the lands under the respective projects and shall be collected by the Secretary of the Interior as required by such law, and any unpaid charges outstanding against such lands shall constitute a first lien thereon which shall be recited in any patent or instrument issued for such lands."

In accordance with the provisions of these acts the cost of irrigation projects on the Shoshone Reservation has been apportioned.

The Superintendent of the Indian Field Service reported on June 17, 1931, that "The cost of the irrigation project constructed for Indians on the Shoshone or Wind River Reservation has been apportioned in accordance with the benefits received by each individual Indian so far as practicable against such Indians on a per-acre basis against

the lands under the respective projects, and the unpaid charges outstanding against such lands constitute a first lien thereon."

On July 3, 1931, the Commissioner of Indian Affairs stated of record in this case with reference to expenditures for irrigation involved in the case at bar that "the statements contained in Superintendent Haas' letter * * * are in accord with the facts. Prior to the act of August 1, 1914 (38 Stat. 582), the cost of irrigation work on this reservation was payable out of tribal funds. By that act the cost was shifted from the tribal burden to that of the individual Indian or allottee having irrigable land under the project on that reservation. The equitable way of distributing costs is by taking the acreage under a unit or a project and dividing same into the cost of the works, thereby giving the per-acre assessment of charge against each acre of land under the particular unit or project. This method is consistent with usual practice and works the greatest equity to all under the project. Apportionment of construction costs was directed by the act of February 14, 1920 (41 Stat. 408). The act of March 7, 1928 (45 Stat. 202), created a lien against lands of the Shoshone Indian irrigation project, which lien is recited in patents issued for irrigable lands thereunder prior to the payment of the share of the cost of the irrigation work."

34. The elimination of the item of $2,264,123 for irrigation and $235,936.07 for roads and bridges, totaling $2,050,086.07, from the total expenditure of $3,535,480.33 made during the period July 1, 1881, to June 30, 1927, for the joint benefit of the Northern Arapahoe and plaintiff tribes, leaves $1,035,394.26, and from this sum there should be further eliminated the item of "Payment to settlers", set forth in item 27 of the tabulation above, amounting to $9,121.50, representing payments made by the United States to persons who had settled upon the Shoshone Reservation in order to obtain their removal therefrom; this leaves a balance of $1,026,272.76 in respect of which the defendant is entitled to offset against the plaintiff tribe the amount of $508,005.02, on the basis of the average annual population of plaintiff tribe of 49.5 percent to the total population of both tribes during the period 1884 to 1927, inclusive.

The total amounts of $2,264,123 and $235,963.07 expended for irrigation and roads and bridges, respectively, under

[fol. 81] specific appropriations for the joint benefit of plaintiff tribe and the Northern Arapahoe Tribe of Indians were expended in the years and in the amounts following:

Year	Irrigation	Roads and bridges
1906	$25,000.00	
1907	75,952.57	
1908	111,824.53	
1909	103,430.97	
1910	83,209.13	
1911	114,368.77	
1912	48,617.26	
1913	26,675.81	$486.97
1914	52,216.58	9,511.97
1915	53,002.57	24,845.02
1916	25,195.48	24,943.23
1917	55,796.69	24,683.09
1918	141,738.50	24,986.18
1919	160,175.82	19,628.09
1920	353,057.98	23,753.99
1921	145,604.63	14,994.31
1922	74,460.54	11,163.03
1923	98,989.34	14,999.19
1924	215,215.49	19,749.26
1925	196,576.06	8,796.12
1926	48,972.54	7,493.82
1927	54,041.74	5,928.80
	2,264,123.00	235,963.07

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $2,483,467.99.

The defendant on its counterclaim is entitled to offset against the claim of the plaintiff the amount of $1,689,646.50, leaving a balance of $793,821.49.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States seven hundred ninety-three thousand eight hundred twenty-one dollars and forty-nine cents ($793,821.49).

OPINION

LITTLETON, Judge, delivered the opinion of the court:

The Jurisdictional Act, under which this suit was instituted, was approved March 3, 1927, 44 Stat. 1349. It conferred jurisdiction upon this court, with right of appeal to the Supreme Court by either party, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims which the Shoshone Tribe of Indians of the Wind River Reservation in the State of Wyoming might have against the United States arising under or growing out of the treaty of July 3, 1868, or arising under or growing out of any subsequent treaty or agreement between said Shoshone Tribe and the United States or any subsequent act of Congress affecting the tribe which claims have not heretofore been determined and adjudicated upon their merits by this court or the Supreme Court. In section 3 it was provided that "In said suit the court shall also hear, examine, and adjudicate any claims which the United States may have against said tribe, but any payment, including gratuities which the United States may have made to said tribe, shall not operate as an estoppel but may be pleaded as an offset in such suit: Provided, however, That the United States may interpose to such suit or action any and all pleas of defense, affirmative and negative, legal and equitable, which it may have thereto not herein specifically barred by the provisions of this act. In reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government [fol. 82] of the United States and shall annul and cancel all claim, right, and title of the said Shoshone Indians in and to such money, lands, or other property."

1. Several questions are presented which will be discussed in the order of their importance. The first question is whether the United States violated the treaty of July 3, 1868, with plaintiff tribe by placing the Northern Band of Arapahoe Indians upon the Shoshone Reservation, and the determination of this question depends upon whether the plaintiff tribe was willing, with the consent of the United States, to admit the Arapahoe Indians amongst them, as provided in art. 2 of the treaty with the Shoshone Tribe.

The evidence as a whole shows very clearly that the plaintiff tribe did not at any time express its willingness or give its consent to admit the Arapahoe Indians amongst them on the Shoshone or Wind River Reservation within the meaning of this provision of the treaty, and that the plaintiff tribe and the United States did not consent to this arrangement in the manner contemplated by the treaty. This provision of the treaty defining the reservation and providing that the territory "shall be and the same is set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them" is the well-known provision inserted in practically all of the treaties made with many Indian tribes about the date on which the treaty with plaintiff tribe was made; and it was well understood, we think, by the Indians concerned and the United States that no other tribe or band of Indians was to be given any rights to or upon the described reservation or permanently settled thereon to live amongst the tribe with which the treaty was made, unless such tribe for whom the reservation was set apart should be willing, with the consent of the United States, to admit other friendly tribes or individual Indians to live amongst them upon the reservation and to use, occupy, and enjoy the reservation and all its facilities or to use, occupy, and enjoy some portion of the reservation equally with the Indians belonging to the tribe with whom the treaty was made. The plaintiff tribe so understood the provisions in question from the date the treaty was made, and the course of dealings between the various Indian tribes and the United States in similar matters has been consistent with this understanding. The usual procedure followed by the United States and Indian tribes in complying with like provisions affecting tribes in treaty relations with the United States was to obtain the expression of a majority of the male adult Indians concerned. A number of instances could be cited where this procedure has been consistently followed in dealings between the Government and other Indian tribes, but we deem it necessary to cite only a few instances in which the Congress, in statutory enactments, has given recognition to the desirability of the consent of the Indian tribe affected being obtained.

In sections 5 and 6 of the act of May 17, 1882, 22 Stat. 68, 88, and likewise in the acts of July 4, 1884, 23 Stat. 76, and of March 3, 1885, 23 Stat. 362, it was provided that "where Indians are located on reservations created by Executive [fol. 83] order he [the President] may, with the consent of the tribes to be affected thereby, expressed in the usual manner, consolidate one or more tribes, and abolish such agencies as are thereby rendered unnecessary." It was further provided in these acts that "the several appropriations made for millers, blacksmiths, engineers, carpenters, physicians, and for other purposes, and for various articles provided by treaty stipulations for the several tribes of Indians, may be diverted to other uses for the benefits of said tribes, respectively, within the discretion of the President and with the consent of the said tribes expressed in the usual manner."

In the act of August 19, 1890, 26 Stat. 336, making appropriations for the Northern Cheyennes and Arapahoes for the fiscal year 1891, an amount was appropriated to enable the President to appoint a commission with authority to negotiate with the Northern Band of Cheyenne Indians on the Tongue River Reservation and in the vicinity of Montana, and with the Northern Band of Cheyennes on the Pine Ridge Reservation in South Dakota for the removal of said Northern Bands of Cheyenne Indians to a permanent settlement upon any of the existing reservations, and "to negotiate with any other tribes or bands of Indians for such portion of their reservation as may be necessary for the permanent settlement of the said Northern Bands of Cheyennes, as herein contemplated; * * * but no agreement shall take effect until ratified by Congress."

In February 1870 the Department of Indian Affairs endeavored to obtain the consent of the plaintiff tribe to admit the Northern Band of Arapahoe Indians amongst them, but such consent was refused, and these Indians, which had come to the Shoshone Reservation to treat with the Shoshones for a home, were later removed by the Government to old Ft. Casper. Again, in June 1879, after the Northern Band of Arapahoes had been brought back to the Shoshone Reservation and settled thereon without the consent of the Shoshones, as hereinafter discussed, the office of Indian Affairs of the Interior Department wrote James I. Patten, Indian agent for the Shoshones, that it was desired to have

Ten Doy and his band of Lemhi Indians located "on your reservation, provided your Indians will give their assent to the same. You will therefore without delay call a council of the Indians and submit the matter to them, with such explanations and facts as you may deem best, in order to obtain their consent, and report the result." Such a council was called. The Shoshones refused to give their consent, whereupon Patten reported to the Commissioner of Indian Affairs that "their consent to the proposal of the Department to transfer those Indians to this reservation could not be obtained, and the council adjourned."

2. The next question is whether the plaintiff tribe expressed its willingness or gave its consent to admit the Northern Band of Arapahoe Indians amongst them in such manner as would conform to art. 2 of the Treaty of 1868 and preclude them from having a just claim for compensation because of the placing of the Arapahoe Indians upon their reservation with equal rights with the Shoshone Indians. We think they did not so consent. The material facts with reference to this feature of the case have been gathered from the entire record, mostly documentary, and have been set forth in the findings and need not be repeated here. Counsel for the defendant base their contention that the Shoshone Indians consented to admit the Arapahoe Indians amongst them upon isolated statements taken from certain [fol. 84] letters and reports of Indian agents for the Shoshone Reservation, some of whom went there many years after the Arapahoes were brought upon the reservation and were not familiar with the past history of the matter, and upon the absence of any statement in the annual reports of the Commissioner of Indian Affairs subsequent to 1878 of any friction between the two tribes or of any protest on the part of the Shoshones to the presence on the reservation of the Northern Arapahoes. These contentions of counsel for the defendant fail to find support for the purposes for which made when considered in the light of the whole record. For the most part such statements indicate merely that there had been no hostilities between the tribes and that both tribes were living upon the reservation in a peaceful manner. Although the two tribes had been traditional enemies, the Northern Arapahoes having been allied with the Sioux and Cheyennes, the Shoshones had agreed to make peace with the Arapahoes and they were noted for

keeping and fulfilling their agreements. The two tribes have never been very friendly. The record is replete with protests by the Shoshones to the presence of the Arapahoes upon their reservation from the time they were brought there in 1878 until the present time. The only consent the Shoshones ever gave to the presence of the Arapahoes upon their reservation was at the time the Arapahoes were first brought to the reservation under military escort; they were then told that they might remain there for a short time to rest and feed their horses but that they should remove from the reservation as soon as possible.

The fact that the annual reports of the Commissioner of Indian Affairs for 1878 and subsequent years make no reference to the protests and objections of the Shoshones to the Arapahoes sharing their reservation is not, we think, important in view of the fact that the files of the Indian Office in Washington contained written reports definitely stating the position of the Shoshones with reference to the matter. The office of the Commissioner of Indian Affairs had consistently ignored the many reports of Indian Agent Patten stating the position of the Shoshones and asking for instructions. It is worthy of note, however, that in his report as late as 1899 the Commissioner of Indian Affairs, at page 379, stated that "This fall the Shoshones will receive the last installment of their treaty supplies and will be without further support, while the Arapahoes, presumably, will still be supplied under the provisions of the Black Hills Agreement. This discrimination will create dissatisfaction and arouse the jealousy of the Shoshones, *who have never been very friendly with the Arapahoes, whose joint occupancy of this reservation they regard as an intrusion.*" (Itals. supplied.) This statement of the Commissioner of Indian Affairs succinctly states the position which the plaintiff tribe took from the time the Arapahoes were first brought to the Shoshone Reservation in 1878.

The record discloses that the Northern Arapahoe Indians were brought from old Ft. Casper under military escort to the Shoshone Reservation in Wyoming in the winter of 1877-78, as a result of the belief of the Commissioner of Indian Affairs that the Shoshone Indians had given their consent to admit the Arapahoes amongst them on their reservation when such was not the case. This error grew out of the misunderstanding by the Indian Office of the tele-

[fol. 85] gram of James Irwin, who had been sent to counsel with the Shoshone Indians with a view to obtaining their consent to admit the Arapahoes amongst them. Irwin did not obtain such consent from the Shoshones, but obtained an agreement with them to make peace with the Arapahoes. Accordingly, on October 17, 1877, Irwin dispatched a telegram to the Commissioner of Indian Affairs in which he stated that he had "held counsel and made peace between Shoshones and Arapahoes." This the Commissioner of Indian Affairs evidently construed at the time as meaning that the Shoshones had consented to the permanent settlement of the Arapahoes upon the Shoshone Reservation, for, in his annual report dated November 1, 1877, the Commissioner of Indian Affairs stated at page 416 that "In accordance with their earnest request made to the President during the recent visit of the delegation in this city, permission was given the Northern Arapahoes to join the Shoshones on the Wind River Reserve in Wyoming. In a formal council held last month by Agent Irwin with the Shoshones, their consent to the arrangement desired by the Arapahoes was obtained, and the removal of the latter is now in progress." This erroneous position of the Commissioner of Indian Affairs was afterwards made the basis of a definite ruling in August 1891 by that official that the Shoshones had equal rights to the reservation which did not depend upon the further consent of the Shoshones. It appears that there was a conflict between Agent Irwin and the Commissioner of Indian Affairs as to their understanding of what the delegation of Northern Arapahoes requested of the President and what the President promised them upon their visit to Washington late in September or early in October 1877. Agent Irwin, who accompanied the delegation to Washington with his own interpreter, appears to have been in a better position to understand what was requested and promised than was the Commissioner of Indian Affairs. Agent Irwin proceeded to carry out the arrangement as he understood it. That matter is only of importance now as throwing light upon the reason for the permanent settlement of the Northern Arapahoe Indians upon the Shoshone Reservation without the consent of the Shoshone Tribe.

3. The next question concerns the date on which the Government took an interest in the Shoshone Reservation for

the Northern Band of Arapahoe Indians. Counsel for the defendant contend that this occurred on March 18, 1878, when the first group, consisting of certain chiefs and headmen of the Northern Band of Arapahoes, arrived at the agency upon the reservation and had a conference on the following day with Chief Washakie and other Shoshone Indians, as set forth in the findings. On the other hand, the plaintiff contends that the Arapahoe Indians were brought to and placed upon the reservation as a result of the errors and misunderstandings hereinbefore mentioned, and that this was done by the officials of the Government, who were without authority to act for the Government in that regard; and that, since no action was taken by the President or the Congress approving or ratifying what the Commissioner of Indian Affairs, with the acquiescence of the Secretary of the Interior, had done, there was no legal taking of any title or interest which the Shoshone Indians had in the reservation under their treaty of 1868 for the benefit of the Arapahoes until the enactment of the Jurisdictional Act of March 3, 1927, under which act this suit was brought; that [fol. 86] from 1878 to March 3, 1927, the Arapahoe Indians were simply intruders upon the reservation whom the Government failed and refused to remove. Plaintiff tribe therefore contends that it is entitled to recover compensation for the value of the use and occupancy of the reservation by the Arapahoes from 1878 to 1927 and to recover the value of a one-half undivided interest in the reservation on the latter date. We are of opinion that the Government, through the Commissioner of Indian Affairs, who by statute was charged with the management of all Indian affairs and all matters arising out of Indian relations under direction of the Secretary of the Interior, and agreeably to such regulations as the President might prescribe, took from the plaintiff tribe an undivided one-half interest in all property and property rights to which they were entitled by law for the benefit of the Northern Band of Arapahoe Indians; and that this action of the Government; acting through the Commissioner of Indian Affairs, occurred on August 13, 1891, when that official definitely held that "this office holds that the Arapahoes have equal rights to the land on the said reservation which does not depend upon the further consent of the Shoshones." (Finding 11.) Prior to that time—that is, from the period March 18, 1878, until August 1891—the Arapahoes simply resided upon, used, and occupied the

reservation equally with the Shoshones as a result of the errors and misunderstandings by the officials charged by law with the management of all Indian affairs as to the willingness and consent of the Shoshones to admit the Arapahoes amongst them, without any definite action having been taken in regard to the matter when the error was first called to the attention of the proper officials.

Prior to August 1891, the whole matter of the presence of the Arapahoes on the Shoshone Reservation was in a state of uncertainty. The record shows that the Shoshones desired and believed that the Government would finally provide a separate reservation for the Arapahoes, as the Shoshones had been advised would be done, and the Arapahoes were uncertain as to their rights upon the reservation and as to what would ultimately be provided for them. As late as March 30, 1886, the Arapahoes petitioned the Commissioner of Indian Affairs through Thomas M. Jones, then Indian Agent for the Shoshone Reservation, with reference to the uncertainty of their tenure. On that date Jones advised the Commissioner of Indian Affairs that "I am requested by the leading men of the Arapahoe Indians to state that they feel extremely uneasy in regard to their future prospects in view of a proposed bill before Congress respecting Indian lands. They fear that as Washakie, the chief of the Shoshones (so far as they can learn), has never surrendered on behalf of his tribe any of the land rights, to them, but has simply given his consent to the Arapahoes living here, and in case of passage of such an act, the law will fix it that this land belongs solely to the Shoshones and hence that they will be left out on this reservation and also on the one they came from." The Department instructed Agent Jones to inform the Arapahoes that they would be taken care of.

The Commissioner of Indian Affairs, under section 2, U. S. Code, title 25, is charged with the management for the Government of all Indian affairs and of all matters arising out of Indian relations and that section provides that "the Commissioner of Indian Affairs shall, under the [fol. 87] direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." This court has held that the action of the Commissioner of Indian

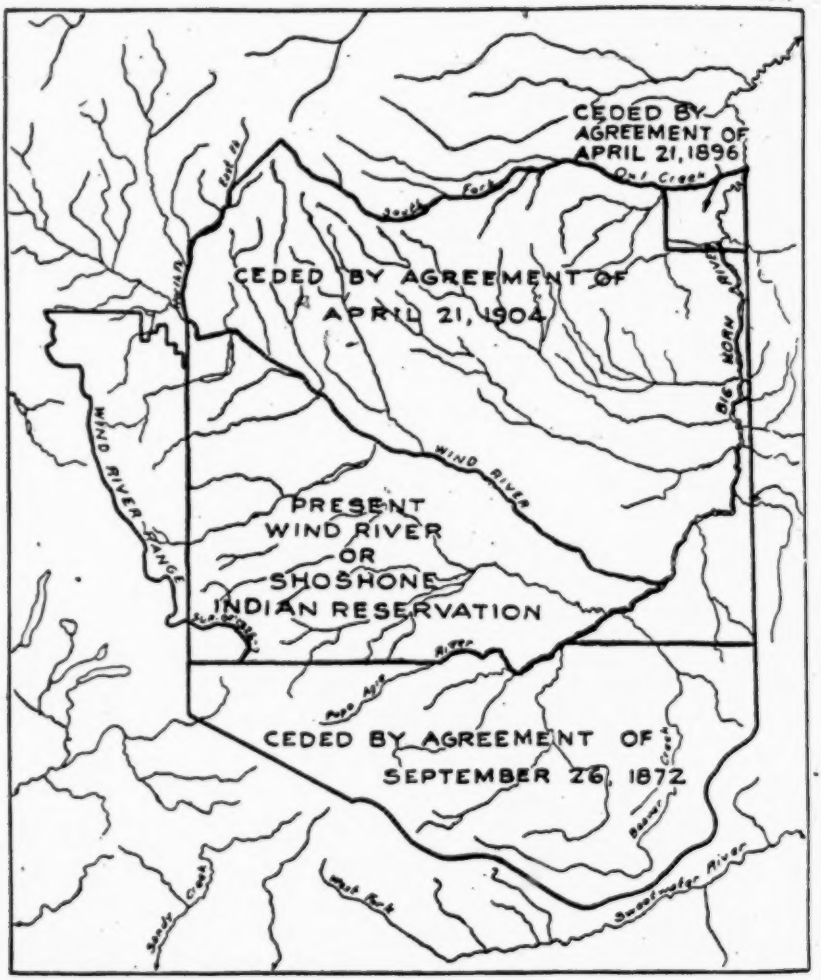
Affairs must be presumed to be the action of the President. Belt's, Executrix, v. The United States, 15 C. Cls. 92. Although the Commissioner of Indian Affairs placed the Arapahoes on the Shoshone Reservation without the consent of the Shoshone Tribe and violated art. 2 of the treaty of 1868 in keeping them upon the reservation over the protest of the Shoshones, and in finally holding that they had rights thereto equal with the Shoshones, he nevertheless was the duly designated and authorized officer to represent the Government in such matters. When the facts as to what had been done were clearly placed before Congress, bills giving this court jurisdiction to determine the rights of the Shoshones in the premises were introduced and recommended for passage from 1912 until the act of March 3, 1927, was finally enacted. This Jurisdictional Act was not, in our opinion, a taking by the Government from the plaintiff tribe of an interest in their reservation for the benefit of the Arapahoes. Its intent and purpose, we think, was only to provide a forum in which the claims of the plaintiff tribe against the United States could be heard and adjudicated. Its only effect, at most, was to ratify what had been done by the Commissioner of Indian Affairs and to place the plaintiff tribe in a position to have its claims adjudicated according to law. The Mille Lac Band of Chippewas v. The United States, 47 C. Cls. 415, 436, affirmed 229 U. S. 498, 500. The Jurisdictional Act makes no admission of liability, or of any ground of liability, on the part of the Government, but merely provides a forum for adjudication of claims according to applicable legal principles. It authorizes this court to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims which the Shoshone Tribe may have against the United States. The act contains no language which can be construed as a taking, at the time of its enactment, of any right, title, or interest of the plaintiff tribe to any lands, monies, or other properties to which they may have been entitled under the Treaty of 1868 or any subsequent agreement or act of Congress, nor does it contain any language indicating a purpose to fix any definite time or date on which any property of the Shoshones, of which they may have been wrongfully deprived, should be valued. We think that if Congress had intended that the Jurisdictional Act be interpreted as the taking of lands

and other properties of the Shoshones for the benefit of the Arapahoes, it would have used language sufficiently clear to manifest that purpose. In Crozier v. Fried. Krupp Aktiengesellschaft, 224 U. S. 290, it was held that "The adoption by the United States of the wrongful act of an officer is of course an adoption of the act when and as committed, and causes such act of the officer to be, in virtue of the statute, a rightful appropriation by the Government, for which compensation is provided." In that case the court was construing the act of 1910 authorizing suits against the United States for patent infringement, and the issue involved a patent which had been used without permission of the owner by an officer of the United States prior to the passage of that act. Moreover, the rules with reference to condemnation proceedings and the taking of private property for public use are not entirely applicable to cases such as the one at bar. The Indian tribes were [fol. 88] under the control, care, and protection of the United States and, although they could not legally be deprived of any property secured to them by treaty, agreement, or act of Congress, the legal title to lands embraced in reservations set apart for the absolute and undisturbed use and occupancy of Indians remained in the United States. In these circumstances we think the acts of the Commissioner of Indian Affairs, who was the official directly charged with the administration and management of all Indian affairs, may properly be said to have been the acts of the Government. For the reasons stated, it is our opinion that an undivided one-half interest in plaintiff's reservation was taken from them for the benefit of the Northern Band of Arapahoes on August 13, 1891, and that the plaintiff tribe is entitled to recover the value of an undivided one-half interest in the reservation on that date.

4. The foregoing conclusion makes it necessary for the court to fix the value of an undivided one-half interest in the reservation of 2,343,540 acres. After a careful consideration of the character of the land embraced within this area, its fertility, the water supply well situated and suitable for irrigation purposes, and all other factors entering into the question of value in which the Indians were at that time the beneficial owners, such as timber, coal, oil and gas, phosphate, and gypsum, and fees from grazing

leases, we have fixed the fair and reasonable value of a one-half undivided interest in the reservation on August 13, 1891, at $1.75 an acre, or $2,050,597.50. The greater portion of the lands embraced within this reservation was very fertile and unusually well adapted for farming, by reason of the adequate supply of water well situated for use for irrigation purposes. The reservation also embraced a very large area of fine grazing land from which considerable income was being derived from grazing leases. It contained approximately one billion board feet of excellent timber and portions of the reservation were underlaid with a large quantity of bituminous coal. In 1891, however, no coal of any consequence had been mined, due to lack of demand therefor. The reservation also had railroad facilities. It contained a large, but undetermined, quantity of oil and gas. All of these matters are of great importance in the determination of the value of the land in 1891, since, at that time, the plaintiff tribe was entitled to the net proceeds derived from the reservation from all sources under the act of March 3, 1883, 22 Stat. 590, which provided that "The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the Five Civilized Tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe." The oil and gas reserves alone were of great value in 1891. The Government, for the purpose of this suit, fixed the 1926 present value of these reserves at $6,000,000. It is believed that a tracing of the Shoshone or Wind River Reservation showing its boundaries and the rivers which run through it, the areas ceded to the Government, outright and in trust for the Indians, and the present diminished reservation of 808,500 acres, will be helpful in the consideration of value in the light of the facts hereinbefore set forth in the findings. Such a tracing follows:

[fol. 89]



[fol. 90] Net income has been steadily derived from various sources on the reservation under the above-quoted statute, and similar statutes subsequent thereto, with the result that for the period of 42 years from 1885 to 1927 net proceeds totaling $1,628,744.56 were derived from the reservation and deposited in the Treasury to the credit of the Arapahoe and plaintiff tribes. In addition to these matters affecting value, the facts show that in April 1896, about five years after the Government definitely took an undivided one-half interest in the reservation for the benefit of the Arapahoes, the United States purchased 55,040 acres on the northern boundary of the reservation, for which it

paid $60,000, or slightly more than one dollar an acre. This area contained no minerals or oil and gas. From 1885 to 1927 the proceeds derived by the Indians upon this reservation from cessions and net income from products of the reservation totaled $2,003,590.90, all of which the plaintiff tribe would have owned had not a one-half interest in the reservation and all proceeds therefrom been taken by the Government for the Northern Arapahoes. The above amount does not include the amount received under the cession of 1872.

In 1872, nineteen years prior to the controlling date in 1891, the plaintiff tribe ceded a large tract of land, mostly in the mountainous regions of the reservation, to the Government for about four cents an acre, and counsel for defendant rely upon the price paid for this cession as fixing the value of all other lands on the reservation. It is clear from the facts, however, that this purchase cannot be seriously considered in arriving at the fair and reasonable value of one-half of the reservation in 1891 for the reason, first, that the Indians were uninformed as to the value of the land they were ceding and the representative of the Government who negotiated the purchase made no protense at offering the Indians an amount equal to the value of their title at that time; and, second, the Indian title at that time consisted merely of the right to use and occupy the lands and they did not have the beneficial right to all net proceeds derived from the sales of timber and other products of the reservation, as was the case in 1891. Upon the whole record we are of opinion that the value of $2,050,597.50 for a one-half interest in the reservation as it existed in August 1891 is fair and reasonable and fully justified by the facts.

5. The next question relates to the compensation to which the plaintiff is entitled by reason of the use and occupancy of the reservation by the Arapahoes equally with the Shoshones for the period 1878 to 1891. During this period the Arapahoes were maintained on the reservation by the Government without the consent of the plaintiff tribe, during which time no action had been taken by the Government which gave the Arapahoes any rights to or upon the reservation. This was in violation of art. 2 of the Shoshone

treaty of 1868. During this period of time the Government profited by having the Arapahoes settled upon the Shoshone Reservation. For many years prior to that time the Government had never been able to keep the Arapahoes upon any defined reservation and they had been causing the Government considerable difficulty. After they were placed upon the Shoshone reservation in 1878 they used the same equally with the Shoshones by hunting, farming, pasturing their stock, building houses and fences, [fol. 91] and sharing in the facilities of the agency and the employees provided by the Government for the Shoshone Tribe.

Plaintiff contends that it should be allowed compensation in the amount of $2,038,879.80 for the use and occupancy by the Arapahoes of one-half of the reservation, or 1,171,770 acres, at the rate of 14½ cents an acre a year. We are of opinion that this claimed valuation for use and occupancy by the Arapahoes is excessive and that the better method of determining the value of such use and occupancy, which bears some direct relationship to the benefit to the Government by having the Arapahoes on the reservation, the benefits derived by the Arapahoes, and the damages sustained by the plaintiff tribe, is to arrive at an amount which will approximate the benefits derived by the Government and the Arapahoe Indians and compensate the plaintiff tribe for the uses made of the reservation by the Arapahoes during the period in question. We believe that an amount of twenty-five dollars a year for each Indian in the Arapahoe Tribe is fair and reasonable in the circumstances. During the period from 1878 to 1891 the average annual population of the Arapahoe Tribe was 1,023. On a basis of a value of twenty-five dollars a year for this number of Arapahoes over a period of thirteen years, the plaintiff is entitled to recover $332,475. This amount is therefore allowed plaintiff tribe as the value of the use and occupancy of an undivided one-half interest in its reservation by the Arapahoe Tribe from March 1878 to August 1891.

6. The next claim of plaintiff is for $540,000, alleged damages sustained by plaintiff tribe for trespass by livestock belonging to persons other than the Indians from 1873 to 1894, for which alleged damages plaintiff insists the United States is liable under art. 2 of the treaty which

set apart the designated reservation for the absolute and undisturbed use and occupancy of plaintiff tribe; and in which article the United States also agreed that no persons, except those therein designated and authorized so to do, should ever be permitted to pass over, settle upon, or reside in the territory designated in that article for the use of said Indians.

It is insisted by the plaintiff that during this period there were as many as 20,000 horses and cattle annually on the reservation belonging to outside parties, from which the Indians derived no benefit and which stock destroyed much of the grass and hay on the reservation, and, in some instances, damaged the crops of plaintiff tribe. The amount of two dollars a head a year for all stock as the damage sustained by the Indians, amounting to $200,000, is claimed by plaintiff from 1873 to 1877, and one-half, or $340,000, from 1878 to 1894.

The evidence shows that at different times during this period a very large number of horses and cattle came upon and grazed over a very large area of the reservation, for the most part north of the Wind River, but we cannot say from the evidence in the record that there were as many as twenty thousand head of horses and cattle grazing upon the reservation annually during the period mentioned, and, even if the United States was liable during that period to compensate the Indians because of this trespass, which we think it was not, as we shall hereinafter endeavor to show, a charge of two dollars a head a year for all stock appears [fol. 92] to us to be excessive in view of the fact that the grazing fees on the reservation, under the Department regulations in 1927, were only $2.25 a head a year for cattle and three dollars a head for horses.

A proper interpretation of art. 2 of the treaty we think compels the conclusion that the United States is not liable to respond to the Indians for this alleged damage. During a portion of this period the Indian title consisted only of the right to use and occupy the reservation and they were not, during that period, the legal or beneficial owners of the products of the reservation. The provision of the treaty relied upon was common to practically all of the Indian treaties, and we think it would be an unwarranted construction of the language used in the treaty to place upon the United States the legal obligation to respond in

damages if it should fail to keep these vast reservations free from trespassing stock. Stock grazing was one of the principal businesses engaged in by the white settlers in the western country during this period and as such stock grazed over large areas where there were no barriers, it must have been known and contemplated when the treaty of 1868 was written that stock of white settlers, some of whom were then residing within the limits of the reservation and owned stock, and the stock of many others residing near the boundary lines of the reservation, would find their way at times upon the reservation. In these circumstances we think the United States, at most, agreed only to use its best efforts to keep the reservation free from intrusion or trespass by the whites. At the time the treaty with the plaintiff tribe was made, the act of June 30, 1834, 4 Stat. 730, U. S. Code, sec. 179, title 25, was in force and provided that "Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of $1 for each animal of such stock"; and further provided (sec. 180, U. S. C., tit. 25) a penalty of $1 for every person who made a settlement on any lands belonging, secured, or granted by treaty with United States to any Indian tribe. The said act of 1834, sec. 223, U. S. C., tit. 25, authorized the President to employ the military forces in the enforcement of the provisions of that act. Repeated efforts were made by the Government through Indians agents, with the use of military forces on instruction from the Secretary of the Interior, to keep trespassing stock off the reservation and by the latter official, in attempts to prosecute all persons responsible for trespass with only partial success until about 1894, when trespass by stock upon the reservation was under control.

For the foregoing reasons we are of the opinion that the United States is not liable under art. 2 of the treaty for failure to keep plaintiff's reservation free from trespass of stock, and that plaintiff is not entitled to judgment on this claim.

7. Plaintiff next claims $4,455,000 damages for loss and destruction of game. We shall not undertake to discuss the details of the involved method by which plaintiff arrives at the amount of this claim, which, for the most part, is

based upon estimates and percentages, for the reason that we are of opinion that the United States was under no obligation by treaty, or otherwise, to preserve the wild game and fur-bearing animals upon the reservation for [fol. 93] the exclusive use and disposition of the Shoshone Indians. The reasons given for the denial of the foregoing claim with reference to trespassing stock and white settlers apply to the claim for damages for loss and destruction of game. It would seem obvious that without express language obligating the United States to compensate the Indians for a loss of this character it was not intended or contemplated by either party to the treaty that the United States would undertake such an impossible task or respond in damages so conjectural and incapable of definite proof. The language of the treaty setting apart the reservation for the use and occupancy of plaintiff tribe was the usual language used in practically all of the Indian treaties, of which there were a great many prior to and at the time of the making of the Shoshone Treaty in 1868, and the knowledge of the conditions existing in the western country at the time of the various treaties were made compels the conclusion that the United States did not intend to take upon itself the obligation of preserving the game and fur-bearing animals that might have been upon the various reservations at the time the treaties were made for the sole and exclusive use of the Indians. The treaty in this case did not mention game or fur-bearing animals. They were not a part of the reservation as that term was used in the treaty and the Indians had no title to the game upon which they could base a claim for damages against the United States. Section 8 of the act of June 30, 1834, supra (sec. 216, U. S. C., tit. 25), provided that "Every person, other than an Indian, who, within the limits of any tribe with whom the United States has existing treaties, hunts, or traps, or takes and destroys any peltries or game, except for subsistence in the Indian country, shall forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and all peltries so taken; and shall be liable in addition to a penalty of $500."

It seems clear to us that the United States assumed no greater obligation in the preservation of game on Indian reservations than to use its best efforts to enforce the law.

In the case of the Blackfeet, Blood, Piegan, and Gros

Ventre Nations or Tribes of Indians v. The United States, no. E-427, decided April 8, 1935, this court, in denying a similar claim, said "The proof adduced to sustain the damages claimed is based upon what the plaintiffs assert as the reasonable value of the hunting grounds to the plaintiffs, equal in amount to the value of the food, clothing, lodges for shelter, bedding, furs, and hides necessary for the support and maintenance of each of the tribes for that portion of the 99 years of which they allege they were deprived. From historical and official documents the average number of the various tribes interested is sought to be established and a stated sum of $100 per year per person is fixed as the reasonable value of food, etc., necessary to maintain them. The treaty contains no express stipulation that the Government will respond in damages for the diminution in quantity or the entire loss of food and shelter supplies at the time available on the hunting ground. * * * The limited privilege and license to exploit the territory for game and wild animals, while limited as to parties, was not, we think, intended to fix other obligations that the one to delimit an area of lands, vast in extent, over which the Indians mentioned might hunt without in- [fol. 94] terference from other and hostile tribes. Assuredly no article of the treaty may be cited wherein the Government obligated itself to maintain this enormous acreage of land as a game preserve for the Indians for 99 years. The right accorded was a permissive one and its continued existence was dependent upon numerous factors over which neither the Government nor the Indians could possibly have control. The Indians for many years had hunted over this area and conflicting claims were set up as to the right to do so; the treaty did no more than adjust the difference by an amicable agreement among the Indians that those mentioned in the treaty would assent to the common privilege set forth therein, without in any way or by any terms guaranteeing to the Indians a maintenance of the status quo for almost a century. We need not, however, discuss at length the arguments pro and con advanced in the briefs. The plaintiffs' contention is vulnerable in many aspects. The court under the law could not award a money judgment upon proof conjectural and uncertain as to facts. Human testimony is incapable of establishing with any degree of certainty that either the quantity or character of food and

shelter supplies at the time on the hunting ground area would have remained sufficient to supply the plaintiff's needs had not the white emigrants and the Indian traders gone upon the lands. * * * It would be impossible from the record to ascribe to the Government alone the responsibility for the disappearance of game and wild animals from the hunting ground. * * *."

Plaintiff is not entitled to judgment upon this item of the claim.

8. Plaintiff next claims that it should be compensated in the amount of $101,520 for the value of wood and hay requisitioned for use at the military post from 1869 to 1909, inclusive. Of this amount, $43,020 represents the value claimed for wood at the rate of fifty cents a cord and one dollar a ton for the hay over a period of forty years. The amount of $58,500 represents claimed interest.

The facts show that the military forces at the military post on the reservation did use a considerable quantity of wood and hay, but it is shown by the evidence that the Indians of the Shoshone Tribe who were authorized by the Interior Department to supply this wood and hay to the military post were, during a greater portion of the period, given contracts by the Indian agent on authority of the Secretary of the Interior to deliver such wood and hay to the military post. The Indians were paid by the military authorities for the wood and hay furnished, and even if the Indian tribe had been the beneficial owner of the wood and hay on the reservation, which we think they were not prior to 1883, no recovery can be had in the circumstances.

Plaintiff contends that the Shoshone Tribe, as such, was the one entitled to compensation, and that it is of no consequence that the individual Indians who furnished the wood and hay received payment therefor. We cannot agree with this contention. Plaintiff is not entitled to judgment upon this claim.

9. The next item relates to plaintiff's claim for $1,106,750, alleged value of gold removed from land within the boundaries of the reservation between 1868 and 1874, inclusive. Plaintiff's estimate of the value of the gold removed from land within the original reservation is, we think, somewhat speculative and exorbitant, but it is admitted by all that a large quantity of gold was mined and re-

[fol. 95] moved from land embraced within the original boundary lines of the reservation as fixed in the treaty of 1868. Gold produced from the Miners' Delight district was taken from two types of deposits—lodes and placers. Miners' Delight lode was mined to an average depth of 100 feet for a distance of 1,900 feet; the width of the vein varied from 1½ to 5 feet; carried values from wall to wall averaged $15 to $40 a ton; and all ore was treated in stamp mills. The placers were likewise productive of much valuable gold.

The evidence is undisputed that a large quantity of gold was removed from lands lying within the boundaries of the reservation. The Government admits that gold of the net value of approximately $350,000 was mined within the reservation. Upon a consideration of all the evidence contained in the record, we are of opinion that the maximum value of gold removed from mines located within the limits of the reservation did not exceed $500,000. However, we deem it unnecessary to discuss this matter in detail, for the reason that, in our opinion, the plaintiff cannot recover on this item. Prior to and at the time of the making of the treaty of 1868, gold had been discovered and was being mined in the district mentioned, and the boundaries of the reservation as fixed by the treaty included within the reservation a portion of this mining district; in fact, the most valuable mines in the district were afterwards found to be located upon the reservation. As a result of this a commissioner was appointed pursuant to the act of Congress of June 1, 1872, to negotiate with the plaintiff tribe for the relinquishment of that portion of the reservation which included the mines and all gold-bearing land. Accordingly, an agreement was entered into between plaintiff tribe and the United States on September 26, 1872, ratified December 15, 1874 (18 Stat. 291), in which the former ceded to the United States, without any reservations whatever, approximately 700,000 acres of land, which included all the territory embraced within the boundaries of the reservation in any way affected by the gold-mining operations. A consideration of $27,500, specified in this agreement, was appropriated and paid, with the exception of about $14. In these circumstances we are not authorized under the jurisdictional act to reopen this matter. Moreover, the Indian title at the time this cession was made consisted only of the

right to use and occupy the reservation, and at that time the Indians were not the legal or beneficial owners of the mineral rights.

10. The next item on which plaintiff seeks to recover amounts to $418,820.53, of which $245,980.98 represents the unexpended balance of the total appropriations of $1,375,665.34 made for the purpose of carrying out the provisions of the Shoshone Treaty of July 3, 1868, and $172,839.55 represents expenditures under arts. 7, 9, and 10, for transportation of supplies, fuel, and light, miscellaneous agency expenses, agency buildings and repairs, Indian police clothing, pay of interpreters, and one-half of the expenditures made for education and treaty employees from the time the Arapahoes arrived on the reservation in 1878 to June 30, 1927, inclusive.

We are of opinion that the plaintiff is not entitled to recover on this item of the claim. Under the treaty of 1868 the United States did not agree to pay the plaintiff tribe any amount in money in respect of the matters of which the plaintiff complains, and the fact that it appropriated [fol. 96] more money for the purpose of carrying out the provisions of the treaty of 1868 than was found necessary to be disbursed for the articles, and facilities and employees agreed to be furnished in the treaty does not entitle the plaintiff to recover any portion of the unexpended balance appropriated for these various purposes unless it is shown that there was a failure on the part of the United States to furnish the provisions, facilities, or employees specified in the treaty. Even in the latter event it would be necessary for plaintiff to show wherein the United States had failed to fulfill its obligation under the treaty and the extent of such failure. This has not been done. The plaintiff, in its brief, makes some reference to the fact that the United States did not fully comply with art. 7 of the treaty by making sufficient appropriations to provide a school building and a teacher for every thirty children, between the ages of 6 and 16 years, for twenty years. There is some evidence in the record that a school and a teacher were not provided for every thirty children in the Shoshone Tribe between the ages mentioned for the period specified, but the plaintiff makes no definite claim in this regard and the evidence does not establish that the schools and teachers furnished by the Government were not adequate to take care

of the number of children between the ages specified who could be induced to attend school.

The Congress in the various appropriation acts from year to year appropriated specific amounts for specified purposes in the fulfillment of its obligations under the treaty, and the amounts making up the total returned to the Treasury by surplus warrants represented the portion of the amounts specifically appropriated which were found not to be needed for the purposes for which they were appropriated. It has not been shown that the United States did not furnish suitable agency buildings under art. 3; schools and teachers under art. 7; seeds and implements, and a second blacksmith sufficient for the needs of those Indians who engaged in farming under art. 8; annuity goods, clothing, provisions, etc., under art. 9; and sufficient skilled employees for the needs of the Indians under art. 10.

Typical cases illustrating the reason for the return to the Treasury of a portion of the total appropriations for fulfilling the treaty may be cited in connection with the appropriations under art. 9 for annuity goods, clothing, provisions, etc., and for payments to Indians roaming and farming. In respect to the former, the total disbursements for supplying annuity goods, clothing, provisions etc., were $254,657.54, leaving $30,015.26 specifically appropriated for this purpose which was returned to the Treasury by surplus warrant. In respect of the latter, Congress specifically appropriated a total of $265,000 to provide for payments to Indians roaming and farming, and only $237,501.06 was found necessary to be expended for this purpose, leaving a balance of $29,903.68 of such appropriation which was returned to the Treasury by surplus warrant.

What has been said above with reference to plaintiff's right to recover the unexpended balance of the appropriations made to carry out the provisions of the treaty applies to the amounts sought to be recovered with respect to disbursements for transportation of supplies, fuel and light, [fol. 97] etc., which were disbursed and charged to the account "Fulfilling Treaty with the Shoshones." Plaintiff claims that disbursements for the purposes mentioned above represented Government expenditures, which were not proper charges against the Indian tribe. No offsets or counterclaims are made, or could be made, in respect of any disbursements in fulfilling the obligation of the United

States under its treaty with the plaintiff tribe, and we fail to see wherein the tribe has any legal or equitable claim for the recovery from the Government of any amount expended by it in providing and maintaining the facilities and employees agreed to be furnished under the treaty. Even if the amount expended for the purposes mentioned in maintaining the agency buildings, Indian police, and for transportation of supplies be treated as Government expenditures and deducted from the total expenditure disbursed in fulfilling the treaty of 1868, we fail to find in the treaty any provision that would entitle the plaintiff to a judgment for the amounts so expended. Interpreters were employed to enable the Government and the plaintiff tribe property to carry on their negotiations and dealings with each other. The amounts disbursed for that purpose fall in the same class as the disbursements previously mentioned. Nor do we think that plaintiff tribe is entitled to recover one-half of the total disbursements made for educational purposes and for skilled employees under art. 10 in the total amount of $261,313.36 after the Arapahoe Indians came upon the reservation in 1878 to June 30, 1927, for the reason that the evidence does not establish that the plaintiff tribe failed to receive the services of the employees specified according to their needs. Appropriations for skilled employees were made by Congress from year to year for the Arapahoe Tribe of Indians after they moved to the Shoshone Reservation, and there is some evidence in the record that the number of employees at the agency was increased after the arrival of the Arapahoe Indians.

On the whole, we are of opinion that plaintiff is not entitled to recover any amount in respect of the unexpended balance of the total treaty appropriations returned to the Treasury by surplus warrants nor in respect of the treaty expenditures made for various purposes after the arrival of the Arapahoe Indians.

11. The next item relates to the cession agreement of September 26, 1872, supra, (finding 21), under which the United States agreed to purchase and deliver on or before August 10 of each year cattle in the amount of $5,000 annually for five years, and, further, to pay $500 per annum as salary for a like period to Washakie, chief of the Shoshone Tribe of Indians. The amount of $27,485.50 was paid to or expended for the benefit of plaintiff tribe and the balance

of $14.50 of the total consideration appropriated by Congress for fulfilling the provisions of this agreement was returned to the Treasury by surplus warrant. Plaintiff is entitled to recover the latter amount.

12. The next item relates to the Big Horn Hot Springs Cession Agreement of April 21, 1896, 30 Stat. 93, in which 55,040 acres were ceded to the United States for a total consideration of $60,000. The total consideration mentioned was appropriated and disbursed as shown in finding 22. Under our decision that an undivided one-half interest in the Shoshone or Wind River Reservation was taken for [fol. 98] the benefit of the Northern Arapahoe Indians on August 13, 1891, the plaintiff tribe and the Arapahoe Tribe of Indians were each, entitled to one-half of the consideration agreed to be paid under this agreement. The Arapahoe Tribe of Indians have been paid or credited with $7,661.84 in excess of the amount to which they were entitled under this agreement, and plaintiff is entitled to judgment for this amount.

13. The next item relates to the agreement of April 21, 1904, 33 Stat. 1016 (finding 23), under which the plaintiff tribe and the Arapahoe Tribe were likewise each entitled to one-half the proceeds derived thereunder, and each tribe was chargeable with one-half of the disbursements made out of the funds so derived. On this basis the plaintiff tribe is entitled to recover $3,014.98, for which judgment will be entered.

14. The next item relates to the net income of $1,628,744.56 derived from the Wind River Reservation under the act of March 3, 1883, 22 Stat. 590; the act of March 2, 1887, 24 Stat. 449; and the act of May 18, 1916, 39 Stat. 123, from which certain expenditures were made, as set forth in finding 24, leaving a balance of $111,937.62 on hand. Inasmuch as each tribe owned an equal interest in the reservation, they were each entitled to be credited with one-half of this income, which was chargeable against the respective tribes as and when expended. On this basis plaintiff was entitled on June 30, 1927, the date on which the accounting ended, to $89,704.17. This amount will be included by the court in the sum found to be due the plaintiff herein.

15. The last item of plaintiff's claim relates to interest. It claims interest at the rate of 7 percent per annum, the

legal rate in Wyoming, which interest claim applies to the value of the interest in the Reservation which was taken for the Arapahoes and to the value of the use and occupancy by the Arapahoes from 1878 to 1891, as well as to the amount allowed under the agreement of 1896 representing the amount to which plaintiff was entitled, but which was diverted to the use of the Arapahoes.

The jurisdictional act under which this suit was brought makes no mention of interest, except in sec. 2 thereof where it is provided that all amounts which may be found due and recoverable by said tribe, less attorneys' fees and expenses, shall be deposited in the Treasury of the United States to the credit of said tribe and shall draw interest at the rate of 4 percent per annum from the date of the judgment or decree. The provisions of sec. 1 of the act simply confer jurisdiction on this court to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims of plaintiff tribe, and the provisions of sec. 3 that "the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Shoshone Indians in and to such money, lands, or other property" do not, we think, authorize this court to allow interest upon any item of the claim in view of other provisions of the law that no interest shall be allowable on any claim against the United States unless specifically authorized by statute or by contract. Section 177 of the Judicial Code denying the allowance of interest in suits against the United States is of such long standing that it [fol. 99] must be presumed that had Congress intended in the jurisdictional act, under which this suit was brought, that interest be recoverable on any of the items of the claim it would have so provided. In the case of United States v. Omaha Tribe of Indians, 253 U. S. 275, the court upon a claim for interest on an amount recovered under a cession agreement by the Omaha Indians said: "It is contended, however, both as to the award for the excess land and as to another claim allowed, that as the jurisdictional act calls for the consideration of equitable as well as legal claims, the ordinary rule of equity ought to be followed as to the allowance of interest (Himely v. Rose, 5 Cranch, 313, 319, being cited). But the jurisdictional act cannot be regarded as taking the case out of the usual rule. Tillson v.

United States, 100 U. S. 43, 46; Harvey v. United States, 113 U. S. 243, 249 * * *.'' In Tillson v. United States, supra, the court said with respect to a claim for interest under the jurisdictional act, in all material respects the same as the act now before the court, that ''We have no doubt it was the wish of those who procured the passage of the special statute under which the Court of Claims took jurisdiction of this suit to obtain from Congress authority for that court to give a judgment against the United States at least for interest, in case it should be found that payments on the contracts held by the claimants had been unreasonably delayed. But if Congress had desired to grant such authority, it would have been easy to have said so in express terms; and because it did not say so, we are led irresistibly to the conclusion that it did not intend to give any such power. By the statute, the court was required to investigate the claim, and 'ascertain, determine, and adjudge the amount equitably due such firm, if any, for such loss or damage.' There is nowhere any intimation that the investigation is to be conducted otherwise than judicially. The reference was made to the court as a court, and not to the judges as arbitrators. The determination is to be made according to the fixed rules which govern that court in the adjudication of causes, and not at the discretion of the judges. The same principles of jurisprudence and the same statutory regulations as to practice are to be applied here that would be if the case had come into the court under its general jurisdiction. It is to be ascertained and determined what, if anything, is due the claimants from the Government, according to the rules of law applicable to the settlement in that court of controversies between the Government and its citizens. The special statute does not even provide that the adjustment shall be made upon principles applicable to suits between citizens. To our minds the word 'equitable', as here used, means no more than that the rules of law applicable to the case shall be construed liberally in favor of the claimants. * * * Interest, however, would have been recoverable as against a citizen, if the payments were unreasonably delayed. But with the Government the rule is different, for in addition to the practice which has long prevailed in the departments of not allowing interest on claims presented, except it is in some way specially pro-

vided for, the statute under which the Court of Claims is organized expressly declares 'that no interest shall be allowed on any claim up to the time of the rendition of judgment thereon in the Court of Claims, unless upon a contract expressly stipulating for interest.' Rev. Stat., [fol. 100] sect. 1091. This is conclusive." See, also, Ely v. The United States, 19 C. Cls. 658, in which this court held that interest as damages is controlled by the Revised Statutes, sec. 1091 (sec. 177, Judicial Code), though the action be authorized by a special act; and Citizen Indians of the Weas et al. v. The United States, 26 C. Cls. 323, in which the court held that interest in the nature of damages could not be recovered from the United States. Under these authorities plaintiff's claim for interest must be denied.

The amounts which we have concluded the plaintiff tribe is entitled to recover in respect of the various items of the claim total $2,483,467.99.

16. The next feature of the case relates to the offsets claimed by the defendant under the special jurisdictional act consisting of gratuity disbursements under other than treaty appropriations and under specific appropriations. The defendant claims offsets in the total amount of $2,483,467.99. The facts and circumstances relating to these disbursements have been set forth in detail in Findings 25 to 34, inclusive, and will not be repeated here. The total of the offsets set up by the Government in its brief, as above mentioned, have been reduced to $1,689,646.50 as a result of the allocation by the court of a portion of the direct charges made against the plaintiff tribe to joint expenditures for the benefit of both tribes for the reason that the record does not disclose any direct charges against the Arapahoe Tribe in those instances. It would obviously be unfair to offset against the plaintiff tribe expenditures made for purposes in the benefits of which both tribes shared equally, even though such expenditures were charged on the books of the Government directly against the plaintiff tribe. This accounts for a portion of the reduction in the claimed offsets. The balance of the reduction consists of the elimination of two items of $235,963.70 disbursed during the period 1913 to 1927 for roads and bridges on the Shoshone Reservation and $2,264,123 representing disbursements for irrigation systems on the

same reservation during the period 1906 to 1927. We think it is clear that these items are not at this time proper offsets against the plaintiff tribe, as such, in view of the facts disclosed in the findings and the provisions of the acts of Congress quoted therein. The act of July 1, 1932, 47 Stat. 564, provided for the elimination of outstanding reimbursable charges for roads and bridges and the balance outstanding on December 15, 1932, in the amount of $131,492.50, was eliminated and no longer constitutes a reimbursable charge against the Indian tribe as such. The same is true with reference to the expenditures for irrigation, which, by law, has become a charge against the individual Indians to whom land has been allotted and constitutes a first lien on such land. An area of 245,058 acres on the diminished reservation had been allotted in severalty during the period 1907 to 1919.

Plaintiff claims that all expenditures for roads and bridges should be excluded from the offsets, but it seems clear that the act of 1932 authorized elimination only of amounts expended for roads and bridges which the appropriation acts made reimbursable by the tribe. All other expenditures for this purpose, which totaled $266,105.38, remained in the same class as other gratuity disbursements.

Plaintiff contends that the expenditures for pay of agents and interpreters, transportation of supplies, ex- [fol. 101] penses of delegations, and for presents, made out of gratuity appropriations, are not proper offsets chargeable against the tribe, for the reason that the amounts paid out for such purposes were strictly governmental expenditures and that the jurisdictional act did not contemplate that the plaintiff tribe should be charged therewith. With this contention we cannot agree. A similar claim was denied by this court in the case of Blackfeet, Blood, Piegan, and Gros Ventre Tribes of Indians v. U. S., supra, in connection with which the court said:

"Expenditures for the payment of agents, Indian police, judges, interpreters, miscellaneous employees, agency buildings and repairs, superintendents and teachers, surveying, and other like items. It is contended by plaintiffs that these disbursements were made for the general administrative expenses of the Indian Service of the United States, and that the record does not show that the plain-

tiffs, as tribes, received any benefit from such expenditures, or, even if it be assumed they did, to what extent.

"It is difficult to conceive any theory under which these expenditures did not inure directly to the benefit of the plaintiff tribes. They were expenditures which the United States was under no legal obligation to make for, or in behalf of, the plaintiffs. They were unqualified gratuities, and, as such, under the plain provisions of the jurisdictional act, are properly chargeable against the plaintiffs as set-offs against the amounts they are entitled to recover."

The total of the offsets to which the defendant is entitled against the plaintiff tribe is $1,689,646.50. The deduction of this amount from the total of $2,483,467.99, which we hold the plaintiff is entitled to recover, leaves a balance of $793,821.49 for which judgment will be entered in favor of plaintiff. It is so ordered.

Whaley, Judge; Williams, Judge; Green, Judge; and Booth, Chief Justice, concur.

[fol. 102] VI. JUDGMENT

At a Court of Claims held in the City of Washington on the 2nd day of December, A. D. 1935, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $2,483,467.99.

The defendant on its counterclaim is entitled to offset against the claim of the plaintiff the amount of $1,689,646.50, leaving a balance of $793,821.49.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States seven hundred ninety-three thousand eight hundred twenty-one dollars and forty-nine cents ($793,821.49).

VII. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On January 18, 1936, the defendant filed a motion for extension of time of 15 days within which to file motion for

new trial, or for permission to file motion for new trial in typewritten form.

On January 21, 1936, the court allowed the defendant 15 days within which to file printed motion for new trial.

On January 31, 1936, the plaintiff filed a motion for extension of time of 15 days within which to file motion for new trial.

Said motion was allowed by the court January 31, 1936.

On February 14, 1936, the defendant filed a motion for a new trial.

On February 14, 1936, the plaintiff filed a motion for a new trial.

On June 1, 1936, the following memorandum and order overruling motions of plaintiff and defendant for new trial and amendment of findings was handed down by the court with an opinion Per Curiam:

[fol. 103] VIII. MEMORANDUM AND ORDER OVERRULING MOTIONS OF PLAINTIFF AND DEFENDANT FOR A NEW TRIAL AND AMENDMENT OF FINDINGS—Filed June 1, 1936

Per CURIAM:

Motions for a new trial have been filed by both parties. Plaintiff's motion for a new trial is based upon the ground that the court erred in holding (1) that an interest in the Shoshone Reservation was taken for the benefit of the Arapahoes in 1891 rather than in March 1927 when the Jurisdictional Act was passed; (2) in allowing inadequate compensation for the value of the land taken on the theory that the taking occurred in 1891, and (3) in refusing to allow interest at a reasonable rate as part of compensation for the property taken and not paid for.

The defendant's motion for a new trial, except for two items of additional offsets for alleged gratuity disbursements made subsequent to June 30, 1927, is based wholly upon a reargument of the original issues and facts presented in the case and fully considered and discussed by the court in its opinion heretofore rendered.

We have carefully studied these motions for a new trial and the briefs in support thereof, and the additional photostatic copy of documents submitted by the defendant as newly discovered evidence. The entire record has been [fol. 104] again carefully studied, and considered in the

light of the contentions and arguments made in the motions for a new trial and nothing has been found that convinces the court that the findings heretofore made or the conclusions set forth in the original opinion should in anywise be changed or modified. And the court is also satisfied that there is no basis for the granting of a new trial under Section 175 of the Judicial Code on the ground that a wrong or injustice has been done to the United States by reason of the rendition of the judgment in favor of plaintiff herein. If, under all of the facts and circumstances as disclosed by the record and the history of this case from 1878, when the Arapahoes were brought to and placed upon the Shoshone Reservation over the objection of plaintiff, any wrong or injustice has been done in the disposition that the court has made of the matter, it was against the plaintiff in the conclusion that the Shoshone property was actually and legally taken in 1891 instead of 1927, in the value given to the Shoshones for the property taken from them, and in not allowing interest as a part of the measure of compensation. But the court labored upon the case and the authorities upon the subject and carefully studied and considered the record for many months, in the light of all of the statutes enacted by Congress, and the dealings between the plaintiff tribe and the Government, and it is satisfied that the conclusions reached and the judgment rendered in the original opinion are sustained by the record and are fair and reasonable under all of the circumstances in view of the relationship existing between the Indians and the Government. If the court had been dealing with similar questions between private parties or between the Government and a citizen, conclusions more favorable to the plaintiff as to the date of taking and the matter of interest probably would have been compelled by the facts and circumstances. On the whole, therefore, the court is of opinion that there is no merit in either motion for a new trial and that they should be overruled.

[fol. 105] The defendant has submitted a supplemental report from the General Accounting Office with reference to disbursements charged to the plaintiff tribe, and to the plaintiff and the Arapahoe Tribe jointly, for the period July 1, 1927, to June 30, 1934, the previous accounting report submitted to and considered by the court covering only the period from 1868 to June 30, 1927. This supplemental accounting report shows disbursements totalling $6,904.48

charged directly to the plaintiff tribe and $742,404.66 charged jointly against plaintiff and the Arapahoe Tribe. Of the latter amount $255,028.30 represented the amount disbursed for irrigation, which, under the court's opinion, is not a proper item of offset. This leaves a balance of $487,376.36, which the defendant insists the court should prorate to the two tribes on the basis of population and deduct from the judgment rendered herein in favor of plaintiff and that a new trial should be granted and the judgment heretofore entered should be vacated for this purpose. The court finds no reason for granting a new trial and reopening the case in respect of these disbursements. They can be handled by the Interior Department and the accounting officers of the Government under and in accordance with the very definite rules laid down by the court in the opinion heretofore published, and the accounts of the two tribes with the Government for the period July 1, 1927, to June 30, 1934, and subsequently, can be adjusted accordingly. The Jurisdictional Act under which this case was decided contemplated that the court should decide the principles involved and announce the rules to be followed in the matter of accounting between the Government and the two tribes with reference to the property and moneys of the Shoshone Indians taken for the benefit of the Arapahoe Tribe, and that any matters of accounting to the two tribes for funds subsequently arising should be carried out in accordance with the opinion of the court. If this were not true it would be necessary for the court to keep the case continually open for consideration of future disbursements.

[fol. 106] The motions for a new trial and amendment of the findings are overruled, and it is so ordered.

[fol. 107] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 40,756. Court of Claims. Term No. 216. Shoshone Tribe of Indians of the Wind River Reservation in Wyoming, petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed July 22, 1936. Term No. 216, O. T. 1936.

[fol. 108] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 216

ORDER ALLOWING CERTIORARI—Filed October 19, 1936

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 109] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 328

ORDER ALLOWING CERTIORARI—Filed October 19, 1936

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.